

MEETING OF THE PARLIAMENT

Wednesday 13 November 2002
(*Afternoon*)

Session 1

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Scottish Parliament

Wednesday 13 November 2002

(Afternoon)

[THE DEPUTY PRESIDING OFFICER *opened the meeting at 14:31*]

Grant that all who believe in your Son may proclaim the Gospel of Life with honesty and love to the people of our time.

Obtain for them the grace to accept that Gospel as a gift ever new, the joy of celebrating it with gratitude throughout their lives and the courage to bear witness to it resolutely, in order to build, together with all people of good will, the civilisation of truth and love, to the praise and glory of God, the Creator and lover of life.

Time for Reflection

The Deputy Presiding Officer (Mr Murray Tosh): The first item of business is time for reflection. Our time for reflection leader today is Sister Roseann Reddy, of the Sisters of the Gospel of Life.

Sister Roseann Reddy (Sisters of the Gospel of Life): This month sees Scotland celebrate the feast of St Andrew, patron of Scotland and St Margaret, Queen of Scots. Those feasts are not merely some vague remembrance of past glory; rather they are a powerful reminder of our responsibilities in these present times and of our hopes and dreams for the future. The question is, what can we learn from them?

We know that, at Christ's invitation to follow him, St Andrew left everything and followed the Lord at great cost. He was crucified, the image of which endures on the saltire. He brought his brother to Christ and watched as Peter overtook him in the power stakes to become leader. How did St Andrew react? With sheer love and renewed commitment to the cause. There was no room here for petty jealousies, envy or ambition; simply the will to serve.

St Margaret, on the other hand, of noble birth, became Queen of Scotland on her marriage to King Malcolm. She was strong and devout, a wise wife and a devoted mother, and was renowned for her kindness and generosity to those in need.

As we strive to serve people, we must be like those great patrons. We should be recognised for our tolerance and respect, our kindness and compassion.

Pope John Paul II's prayer at the end of his encyclical letter, "The Gospel of Life", is one of great hope and wisdom, a prayer to guide great saints:

O Mary, bright dawn of the new world,
Mother of the living,
To you do we entrust the cause of life
Look down, O Mother,
Upon the vast numbers of babies not allowed to be born,
Of the poor whose lives are made difficult,
Of men and women who are victims of brutal violence,
Of the elderly and the sick killed by indifference or out of
misguided mercy.

Parliamentary Bureau Motion

The Deputy Presiding Officer (Mr Murray Tosh): The next item of business is consideration of a business motion, S1M-3572, in the name of Patricia Ferguson, on behalf of the Parliamentary Bureau, setting out a timetable for stage 3 consideration of the Debt Arrangement and Attachment (Scotland) Bill. I ask any member who wants to speak against the motion to press their request-to-speak button now. I ask Euan Robson to move the motion.

14:34

The Deputy Minister for Parliamentary Business (Euan Robson): Before I move the timetabling motion, I advise the chamber that the Presiding Officer has agreed to a request from the Executive for the Deputy First Minister to make a statement on the fire dispute. The statement will take place immediately after decision time. If it proves necessary to continue business beyond 7 pm to enable the statement to be made tonight, the Scottish Executive will move the necessary motion.

I move,

That the Parliament agrees that, at Stage 3 of the Debt Arrangement and Attachment (Scotland) Bill, debate on each part of the proceedings shall be brought to a conclusion by the time-limits indicated (each time-limit being calculated from when Stage 3 begins and excluding any periods when the meeting is suspended)—

Groups 1 to 7 – no later than 1 hour 10 minutes

Groups 8 to 11 – no later than 1 hour 40 minutes

Groups 12 to 18 – no later than 2 hours 25 minutes

Groups 19 to 23 – no later than 3 hours

Groups 24 to 30 – no later than 3 hours 40 minutes

Groups 31 to 34 – no later than 3 hours 55 minutes

Motion to pass the Bill – no later than 4 hours 25 minutes.

Tommy Sheridan (Glasgow) (SSP): May I speak, Presiding Officer?

The Deputy Presiding Officer: No. I have a request from Lloyd Quinan to speak—I assume that he wishes to speak against the motion.

14:34

Mr Lloyd Quinan (West of Scotland) (SNP): Given the seriousness of the situation with the firefighters and the accident at the nuclear power station at Dounreay yesterday, to wait until 7 o'clock or later to hear the Executive's position on the firefighters' strike is to fail the electorate. We should have the statement now.

The Deputy Presiding Officer: As the motion does not refer to the statement, your suggestion would not be a competent amendment to the motion.

Tommy Sheridan rose—

The Deputy Presiding Officer: No other member has asked in a competent fashion to speak against the motion.

The question is, that motion S1M-3572, in the name of Patricia Ferguson, be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Adam, Brian (North-East Scotland) (SNP)
 Aitken, Bill (Glasgow) (Con)
 Alexander, Ms Wendy (Paisley North) (Lab)
 Baillie, Jackie (Dumbarton) (Lab)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Eadie, Helen (Dunfermline East) (Lab)
 Ewing, Mrs Margaret (Moray) (SNP)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Fergusson, Alex (South of Scotland) (Con)
 Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gibson, Mr Kenneth (Glasgow) (SNP)
 Gorrie, Donald (Central Scotland) (LD)
 Grahame, Christine (South of Scotland) (SNP)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (Edinburgh Pentlands) (Lab)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, Mr John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Hyslop, Fiona (Lothians) (SNP)
 Jackson, Gordon (Glasgow Govan) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
 Johnstone, Alex (North-East Scotland) (Con)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lyon, George (Argyll and Bute) (LD)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 MacKay, Angus (Edinburgh South) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 Marwick, Tricia (Mid Scotland and Fife) (SNP)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McIntosh, Mrs Lyndsay (Central Scotland) (Con)
 McLeod, Fiona (West of Scotland) (SNP)
 McLetchie, David (Lothians) (Con)
 McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)

Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Mundell, David (South of Scotland) (Con)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Neil, Alex (Central Scotland) (SNP)
 Oldfather, Irene (Cunninghame South) (Lab)
 Paterson, Mr Gil (Central Scotland) (SNP)
 Peacock, Peter (Highlands and Islands) (Lab)
 Radcliffe, Nora (Gordon) (LD)
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)
 Reid, Mr George (Mid Scotland and Fife) (SNP)
 Robison, Shona (North-East Scotland) (SNP)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Russell, Michael (South of Scotland) (SNP)
 Scott, Tavish (Shetland) (LD)
 Simpson, Dr Richard (Ochil) (Lab)
 Smith, Iain (North-East Fife) (LD)
 Smith, Mrs Margaret (Edinburgh West) (LD)
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Thomson, Elaine (Aberdeen North) (Lab)
 Wallace, Mr Jim (Orkney) (LD)
 Watson, Mike (Glasgow Cathcart) (Lab)
 White, Ms Sandra (Glasgow) (SNP)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

AGAINST

Canavan, Dennis (Falkirk West)
 Ewing, Dr Winnie (Highlands and Islands) (SNP)
 McAllion, Mr John (Dundee East) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Quinan, Mr Lloyd (West of Scotland) (SNP)
 Sheridan, Tommy (Glasgow) (SSP)

The Deputy Presiding Officer: The result of the division is: For 77, Against 6, Abstentions 0.

Motion agreed to.

Points of Order

14:37

The Deputy Presiding Officer (Mr Murray Tosh): Before we move to the next item of business, I have received notice of a point of order.

Tricia Marwick (Mid Scotland and Fife) (SNP): I seek your guidance on a point of order, Presiding Officer. Paragraph 13 of the policy memorandum to the Debt Arrangement and Attachment (Scotland) Bill states that the bill

“creates a new method of enforcement of legally constituted debt, known as attachment, to be permitted against corporeal moveable property in commercial cases. It makes provision, in exceptional circumstances where strict criteria are satisfied, for an order of court in respect of non-essential valuable assets in domestic cases.”

However, as the long title shows, the bill does not make that distinction—the provision for the new method of enforcement that is enshrined in part 2 of the bill does not restrict the new diligence to commercial cases. Therefore, the bill clearly does not follow the policy of the policy memorandum.

In introducing the bill to Parliament on 19 September, the Minister for Social Justice said:

“Part 2 of the bill responds to recommendations from the Parliament, the working group and the consultation exercise that we should treat domestic and commercial situations differently.”—[*Official Report*, 19 September 2002; c 13886.]

The minister agreed with the policy memorandum. Unfortunately, part 2 does not follow through with that response, which means that domestic cases could still be dealt with through the provisions that are being introduced for commercial cases. Therefore, there is doubt about whether Parliament was fully aware of the general principles of the bill during the stage 1 consideration.

Will the Presiding Officer rule whether that situation renders the bill incompetent under rule 9.3.3 of standing orders, which outlines the documents that should accompany Executive bills? I will refresh members' memories on that rule. Among the accompanying documents that are required for Executive bills is a policy memorandum, which must, among other things, set out the bill's policy objectives and its effects on a range of subject matters.

Standing orders also provide for the member who is in charge of a bill to refer part of the bill back to the relevant committee for further stage 2 consideration, provided that no more than half of the sections are referred. I ask for guidance on whether now would be the appropriate time to

invite the minister to refer back sections 10 to 32 inclusive to the Social Justice Committee for stage 2 consideration under rule 9.8.6 of standing orders.

The Deputy Presiding Officer: I am grateful to the member for giving me notice of the point of order.

On your first point, the content and accuracy of the policy memorandum is entirely a matter for the Executive, as the first paragraph of the memorandum makes clear. Rule 9.3.3 simply requires that a policy memorandum be provided when a bill is introduced. There is no procedural basis for challenging a bill after it has been introduced on the basis of a perceived inadequacy in the text of an accompanying document. The proper time for questioning those documents is during stage 1. In this case, the stage 1 report on the bill comments on those documents in detail.

On your final point, you are right that the member in charge has the right to move to adjourn stage 3 to a later day or, with notice, to refer back parts of the bill for further consideration in committee. Either motion may be moved only after the amendments on the marshalled list have been disposed of. I have no indication that the minister proposes to move either such motion, but that will be a matter for him to decide at the appropriate time.

Tricia Marwick: Are you telling the chamber that a policy memorandum that is published by the Executive can bear no relation to the bill to which it refers and that that would still be a competent process?

The Deputy Presiding Officer: I am not going to rule on hypothetical circumstances. My ruling is that responsibility for the accuracy and content of the memorandum is a matter for the Executive. Disputes about whether the memorandum represents adequately what is in the bill are a matter for political debate. There has been the opportunity—there will be further opportunity in the course of the day—to debate the politics of the issue.

Christine Grahame (South of Scotland) (SNP): On a point of order, Presiding Officer. I hope that you have received notice of this point of order regarding the amendment that I lodged to amend the long title of the bill—amendment 89—which would have deleted

“to abolish poindings and warrant sales”

and inserted

“to rename the diligence of poindings and warrant sales as ‘attachment’”.

The Presiding Officer ruled that the amendment was not competent and he was good enough to

give me guidance why. The amendment fell under criterion 1 of paragraph 4.58 of the “Guidance on Public Bills”:

“Trivial amendments or amendments that are technically defective”.

It is my view that a long title must be faithful to the bill and that the bill does not abolish poindings and warrant sales but renames them. Under the circumstances, I am not satisfied that amendment 89 is a trivial amendment. It strikes at the heart of the role of the long title. I seek your guidance on how I can take the matter further.

The Deputy Presiding Officer: I am grateful to the member for giving me notice of the point of order.

As the member said, she has had the opportunity to discuss the matter with the Presiding Officer, who has given a degree of explanation. It is not the practice of the Presiding Officers to give detailed explanations about the selection of amendments. It having been stated on this occasion that, under criterion 1 of paragraph 4.58, the amendment could not be accepted, I believe that the Presiding Officer’s judgment was that the amendment was technically defective. The Presiding Officer has given the member the opportunity to discuss the matter further. If the member wishes to pursue it, she might usefully seek some private guidance from the Presiding Officer. However, it is not a matter that we have ever chosen to discuss in the chamber and I do not propose that we begin to do so today.

Christine Grahame: Are you ruling that it is not competent to amend the long title? I seek that clarification.

The Deputy Presiding Officer: No, I am not ruling that at all. I am saying that the amendment was not selected for reasons that I am not prepared to discuss any further. If the member wishes to clarify the matter further, she should raise it with the Presiding Officer. The same ruling has been given on several occasions at this stage in debates, and there is no profit in any further wrangling over it.

Debt Arrangement and Attachment (Scotland) Bill: Stage 3

14:44

The Deputy Presiding Officer (Mr Murray Tosh): The next item of business is stage 3 proceedings on the Debt Arrangement and Attachment (Scotland) Bill. I make the usual announcement about the procedures that are to be followed. We will deal with the amendments to the bill first, then move to the debate on the motion to pass the bill. Members should have the usual papers, including the bill, the marshalled list and the groupings of amendments. Members should ensure that they have the revised marshalled list—the word “revised” appears at the foot of the first page—which includes two manuscript amendments that were lodged yesterday. As is standard practice, I shall allow an extended voting period of two minutes for the first division that occurs after each debate on a group of amendments.

Section 1—Debt arrangement scheme

The Deputy Presiding Officer: Amendment 24, in the name of Tommy Sheridan, is in a group on its own.

14:45

Tommy Sheridan (Glasgow) (SSP): The problem with the discussion at stage 2 was that the minister was in automatic mode for most of it. He kept saying that every reasonable amendment was premature because the Executive was awaiting the outcome of its consultation on civil obligations in Scotland. At the 16th meeting in 2002 of the Social Justice Committee, the minister said:

“Having proper regard to the consultation responses will enable us to take all interests into account in a balanced and measured way to ensure that workable, practical and user-friendly arrangements can be put in place.”—[*Official Report, Social Justice Committee, 2 October 2002; c 3072.*]

Amendment 24 fits like a hand into a glove in relation to the consultation document to which the minister referred, because analysis of the consultation on the enforcement of civil obligations in Scotland is now available. Of the 44 responses to the consultation, 42 support the position that amendment 24 would include in the bill. Therefore, given that amendment 24 would guarantee that under no circumstances would debtors accessing the debt arrangement scheme have to pay any expenses or costs, I hope that the minister will say that he supports amendment 24, because it is

completely in line with the consultation that he consistently referred to at stage 2.

Members will note that section 7 of the bill allows ministers to make regulations about fees and expenses for debt applications and variations. However, if it is agreed in principle that a debtor should not incur more expense by trying to access a debt arrangement scheme, surely that should be included in the bill. What is wrong with writing that into the bill? Amendment 24 would ensure that no debtor would be discriminated against or suffer by trying to access a debt arrangement scheme.

I hope that the minister will be consistent at least, given that the consultation to which he referred consistently during stage 2 is now available and shows clearly that what amendment 24 seeks to do is what the consultation requires us to do. Forty-two of the 44 consultees said that no debtor should incur extra expense by trying to access the debt arrangement scheme. I hope that the minister will agree to amendment 24.

I move amendment 24.

The Deputy Minister for Justice (Dr Richard Simpson): As Mr Sheridan said, amendment 24, which reflects the amendment 66 that he moved at stage 2, would provide in the bill a requirement that a debt arrangement scheme would be cost free to debtors. The Executive confirmed at stage 2 that that was a matter of detail best dealt with in regulations, taking account of, as Mr Sheridan said, the views of respondents to the Executive's consultation.

The consultation specifically sought views on how the debt arrangement scheme should be funded. The independent analysis of responses, to which I will refer in connection with amendments that we will debate, was published on 8 November 2002. All members have been provided with a copy of the analysis report. Unfortunately, the report was not available to the Executive or the Social Justice Committee during stage 2, because of the compressed process for the bill. That, in turn, was due to the time restrictions arising as a result of the Abolition of Poindings and Warrant Sales Act 2001. Anyway, that is the situation in which we find ourselves.

The Executive sought views in the consultation on how the debt arrangement scheme should be funded, and the analysis reveals a variety of suggestions for funding the scheme. I do not propose to go into the different options today. The suggestion that there was an absolutely clear consensus is not valid. The Executive will give full consideration to the views that were expressed in the consultation when framing the regulations, which Parliament will be able to debate fully in due course.

As members will know, the Executive gave a commitment at stage 2 to lodge an amendment at

stage 3 to change the procedure for scrutiny of the regulations on the debt arrangement scheme from negative to affirmative resolution procedure. I would like to apologise for the late lodging of Executive amendments 91 and 92, which are manuscript amendments. That was due to an oversight. Amendments 91 and 92 deal with the proposal to make the regulations on the debt arrangement scheme subject to affirmative resolution and allow the Parliament to debate fully the terms of any debt charge payment scheme that we introduce. We believe, however, that amendment 24 should be rejected.

The Deputy Presiding Officer: Mr Sheridan, do you wish to sum up?

Tommy Sheridan: Briefly, Presiding Officer. I hope that the minister will be prepared either to agree or disagree with the fact that, in the consultation that he refers to, 42 of the 44 consultees said that money advice services in the preparation of a debt arrangement scheme application should be free. Does the minister agree with that fact?

The Deputy Presiding Officer: The minister has no right of response at this point. You are concluding the debate on the amendment.

Tommy Sheridan: I am prepared to accept an intervention, but the minister's sedentary position says it all. During stage 2, the minister told us to wait for the consultation. We waited for the consultation, but now he is telling us that he will reject what was said in that consultation.

Dr Simpson: The free text in the analysis shows that a substantial number of differing views were given and the Executive believes that it would be proper for us to take those views into account in framing regulations, which might or might not emerge in the way that Mr Sheridan suggests. This matter should be dealt with in the regulations, which the Scottish Parliament will have an opportunity to debate.

Tommy Sheridan: There lies the difference: the minister thinks that matters should be dealt with in regulations, whereas other members think that they should be dealt with in the bill so that everybody can understand the position when the bill becomes an act instead of having a situation in which a great deal of power is vested in the Executive.

I urge the Parliament to support amendment 24 on the basis that any debtor who wishes to access a debt arrangement scheme should not incur more expense. If everyone agrees with that, we should include it in the bill rather than leaving it to the discretion of the ministers.

The Deputy Presiding Officer: The question is, that amendment 24 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Adam, Brian (North-East Scotland) (SNP)
Campbell, Colin (West of Scotland) (SNP)
Canavan, Dennis (Falkirk West)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Ewing, Dr Winnie (Highlands and Islands) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Gibson, Mr Kenneth (Glasgow) (SNP)
Grahame, Christine (South of Scotland) (SNP)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)
Harper, Robin (Lothians) (Grn)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Lochhead, Richard (North-East Scotland) (SNP)
MacAskill, Mr Kenny (Lothians) (SNP)
MacDonald, Ms Margo (Lothians) (SNP)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
McGugan, Irene (North-East Scotland) (SNP)
McLeod, Fiona (West of Scotland) (SNP)
Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
Neil, Alex (Central Scotland) (SNP)
Paterson, Mr Gil (Central Scotland) (SNP)
Quinan, Mr Lloyd (West of Scotland) (SNP)
Reid, Mr George (Mid Scotland and Fife) (SNP)
Robison, Shona (North-East Scotland) (SNP)
Russell, Michael (South of Scotland) (SNP)
Sheridan, Tommy (Glasgow) (SSP)
Sturgeon, Nicola (Glasgow) (SNP)
Swinney, Mr John (North Tayside) (SNP)
Welsh, Mr Andrew (Angus) (SNP)
White, Ms Sandra (Glasgow) (SNP)
Wilson, Andrew (Central Scotland) (SNP)

AGAINST

Aitken, Bill (Glasgow) (Con)
Alexander, Ms Wendy (Paisley North) (Lab)
Baillie, Jackie (Dumbarton) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Douglas-Hamilton, Lord James (Lothians) (Con)
Eadie, Helen (Dunfermline East) (Lab)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Fergusson, Alex (South of Scotland) (Con)
Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gallie, Phil (South of Scotland) (Con)
Gillon, Karen (Clydesdale) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Goldie, Miss Annabel (West of Scotland) (Con)
Gorrie, Donald (Central Scotland) (LD)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (Edinburgh Pentlands) (Lab)
Harding, Mr Keith (Mid Scotland and Fife) (Con)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, Mr John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
Johnstone, Alex (North-East Scotland) (Con)

Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lyon, George (Argyll and Bute) (LD)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 MacKay, Angus (Edinburgh South) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McAllion, Mr John (Dundee East) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
 McIntosh, Mrs Lyndsay (Central Scotland) (Con)
 McLetchie, David (Lothians) (Con)
 McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Mundell, David (South of Scotland) (Con)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Radcliffe, Nora (Gordon) (LD)
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Scott, Tavish (Shetland) (LD)
 Simpson, Dr Richard (Ochil) (Lab)
 Smith, Iain (North-East Fife) (LD)
 Smith, Mrs Margaret (Edinburgh West) (LD)
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Thomson, Elaine (Aberdeen North) (Lab)
 Wallace, Mr Jim (Orkney) (LD)
 Watson, Mike (Glasgow Cathcart) (Lab)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)
 Young, John (West of Scotland) (Con)

The Convener: The result of the division is: For 31, Against 79, Abstentions 0.

Amendment 24 disagreed to.

The Deputy Presiding Officer: Amendment 25 is grouped with amendments 26 and 28.

Mrs Lyndsay McIntosh (Central Scotland) (Con): We can agree on the principle that debtors who agree to pay their debts in a managed way should be protected from enforcement by their creditors, but there are some uncertainties about how the legislation will work in practice. The explanatory notes and policy memorandum suggest that the debt arrangement scheme is intended only for those who can pay their debts in full, albeit over time.

However, that intention has not been made explicit in the bill. Payment in full over a

reasonable period is central to the credibility of the debt arrangement scheme and to its viability for Scotland's credit markets. Without that safeguard, the debt arrangement scheme is at risk of being abused and could lead, ultimately, to the contraction of credit supply—something that we all wish to avoid. The bill should state explicitly, therefore, that full repayment over a reasonable period is an integral part of the system.

Uncertainty regarding the full payment of debts through the DAS will impact on creditor behaviour. If the operation of the DAS appears to increase the incidence of non-payment among certain types of borrowers, creditors will respond by contracting supply. In the parliamentary debate on 19 September, the Minister for Social Justice said:

"We cannot create a debt enforcement system that can be avoided and exploited."

In the same debate, the Deputy Minister for Justice said:

"We must have a system that protects the poorest in our society".—[*Official Report*, 19 September 2002; c 13888 and 13947.]

However, we must have a system that ensures that those people who can pay, do so.

The DAS must contain the quid pro quo that debtors will not be pursued by creditors because they have made a commitment to repay their debts in full under a debt payment programme. Existing voluntary debt repayment schemes—the minister mentioned some of those schemes at an earlier point—enjoy creditor support because they enshrine the principle of assisted repayment in full. In the debate on 19 September, the deputy minister also acknowledged the effectiveness of debt repayment schemes run by the Consumer Credit Counselling Service. Therefore, the principle of repayment in full should be enshrined in the primary legislation from the outset. Otherwise, creditor participation and confidence will risk being undermined by possible changes to the secondary regulations further down the line.

My series of amendments is designed to address an area of ambiguity in the bill. As drafted, section 2 appears to allow the debtor to determine which creditors are to be paid under the debt payment programme. Some creditors could be preferred over others in an arbitrary way and others could be left out altogether. Both scenarios are inequitable. It should not be for the debtor to pick and choose between creditors; the interests of all creditors must be taken into account. Any blanket prohibition or enforcement would be unfair. The bill should require the debtor to include all creditors in the debt payment programme and to give reasons for any proposed differential treatment. The importance of certainty for creditors was recognised on 2 October, when the deputy minister stated:

"We believe that there is a danger in permitting the debtor to be vague about his debts and about his creditors, particularly as participation in the scheme prevents creditors from exercising their rights to enforce."—[*Official Report, Social Justice Committee*, 2 October 2002; c 3080.]

I look forward to hearing the deputy minister's observations.

I move amendment 25.

Robert Brown (Glasgow) (LD): As this is the first time I have spoken in the debate, I declare that I am a member of the Law Society of Scotland and a consultant to Ross Harper solicitors in Glasgow and, for the avoidance of doubt, I declare my former chairmanship of the Rutherglen and Cambuslang citizens advice bureau.

I speak against amendment 25. Lyndsay McIntosh talked about the normal position of people requiring to pay their debts, which is correct, but we are not talking about the normal situation—we are talking about a situation where the arrangements for payment have broken down. We are trying to deal with the question of the enforceability of those arrangements under circumstances where they can be enforced and where they cannot. I will deal with this subject in my later amendment on the composition of debt and freezing of interest, but if the sort of arrangement to which Lyndsay McIntosh referred is to work satisfactorily, there must be an element of realism about it, which did not come through in her speech.

Many debts can be repaid over a year, 18 months or two years, but there have been numerous examples at stage 1 and in other contributions to the debate, of situations where debtors' ability to repay their debts is such that it could take 27 years, 54 years or 128 years. We have to be realistic and not rule out the possibility of voluntary composition of debts. We should be examining seriously the possibility—in limited circumstances—of applying for a composition arrangement. I accept that that will be covered later on. What we should certainly not do is to rule out—as Lyndsay McIntosh seeks to do—alternative arrangements by introducing a technical, unrealistic requirement for debtors in the debt arrangement scheme to repay their debts in full, under all circumstances.

This is not about applications being made by the debtor alone. The debtor has to have had access to, or have benefited from the involvement of, a money adviser. That is intrinsic to the scheme. The applications have to be approved in due course under the procedures that the bill sets out. It is not simply a matter of the debtor making an application and of everybody falling in with the arrangements and that being the end of the story. A whole lot of safeguards would be required before the arrangements could be put in place.

Against that background, Parliament would be ill-advised to agree to the amendments in Lyndsay McIntosh's name.

15:00

Dr Simpson: Amendments 25 and 26 would make it a condition of participation in a debt payment programme that all debts will be paid in full. That may appear a laudable aim, but we have reservations about the unconditional terms of the amendments.

We have discussed the issue before in connection with the possibilities of composition and the freezing of interest, to which Robert Brown alluded, and on which an amendment is coming up later—I will not pre-empt that discussion now. Suffice it to say that the amendments in this group would actually prevent creditors who are prepared to accept less than the total that is due to them from being able to accept it under a debt payment programme. They could, of course, accept it separately, on a voluntary basis, but it would be difficult for the scheme to recognise and incorporate that. Creditors will generally be asked to consent to the debtor's application to participate in a programme. Any creditor who is not satisfied with the proposed arrangements for repayment of a debt, whether in whole or in part, will not give that consent.

Amendment 28 requires an applicant to attest that all creditors are included in the application, and, if they are not, to state why not. That is a matter of detail for the regulations, and there is power to cover that under paragraphs (a) and (b) of section 7(1).

The Executive's consultation asked for views on whether the penalty for making a false declaration should be revocation. Respondents recognised that there may be instances where debtors genuinely are not conscious of the full level of their indebtedness and that, in those instances, there should be some discretion. Most respondents agreed that, where the declaration has deliberately been falsified, the penalty should be revocation. When drawing up the regulations, the Executive will be taking those views into account, as well as our similar discussion on this topic at stage 2, in relation to variation of the debt payment programme.

Amendments 25, 26 and 28 should, therefore, be withdrawn or rejected.

Mrs McIntosh: I have listened carefully to what the minister has said today, and I carefully went over the minister's previous remarks to try to find something that would accommodate our point of view. He said that the debt arrangement scheme should be framed in such a way as to

“avoid unintended consequences for the Scots law of contract and property”.—[*Official Report, Social Justice Committee*, 2 October 2002; c 3094.]

Specific reference was made to “serious concerns” that, if a DAS resulted in an infringement of creditors’ rights to property, that might contravene article 1 of protocol 1 of the European convention on human rights.

The Executive’s consultation document “Enforcement of Civil Obligations in Scotland” also refers to the requirement for the debt arrangement scheme to be compatible with the ECHR in regard not only to

“the rights of the person against whom enforcement activity is taken”

but also to

“the rights of the person who needs to seek recourse to enforcement action.”

The Deputy Presiding Officer: The question is, that amendment 25 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Aitken, Bill (Glasgow) (Con)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Fergusson, Alex (South of Scotland) (Con)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Harding, Mr Keith (Mid Scotland and Fife) (Con)
 Johnstone, Alex (North-East Scotland) (Con)
 McIntosh, Mrs Lyndsay (Central Scotland) (Con)
 McLetchie, David (Lothians) (Con)
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)
 Mundell, David (South of Scotland) (Con)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Smith, Iain (North-East Fife) (LD)
 Young, John (West of Scotland) (Con)

AGAINST

Adam, Brian (North-East Scotland) (SNP)
 Alexander, Ms Wendy (Paisley North) (Lab)
 Baillie, Jackie (Dumbarton) (Lab)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Campbell, Colin (West of Scotland) (SNP)
 Canavan, Dennis (Falkirk West)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Ewing, Dr Winnie (Highlands and Islands) (SNP)
 Ewing, Mrs Margaret (Moray) (SNP)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
 Gibson, Mr Kenneth (Glasgow) (SNP)

Gillon, Karen (Clydesdale) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)
 Gorrie, Donald (Central Scotland) (LD)
 Grahame, Christine (South of Scotland) (SNP)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (Edinburgh Pentlands) (Lab)
 Hamilton, Mr Duncan (Highlands and Islands) (SNP)
 Harper, Robin (Lothians) (Grn)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, Mr John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Mr Adam (South of Scotland) (SNP)
 Jackson, Gordon (Glasgow Govan) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lochhead, Richard (North-East Scotland) (SNP)
 Lyon, George (Argyll and Bute) (LD)
 MacAskill, Mr Kenny (Lothians) (SNP)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 MacDonald, Ms Margo (Lothians) (SNP)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 MacKay, Angus (Edinburgh South) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 Marwick, Tricia (Mid Scotland and Fife) (SNP)
 McAllion, Mr John (Dundee East) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McGugan, Irene (North-East Scotland) (SNP)
 McLeod, Fiona (West of Scotland) (SNP)
 McMahan, Mr Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Neil, Alex (Central Scotland) (SNP)
 Oldfather, Irene (Cunninghame South) (Lab)
 Paterson, Mr Gil (Central Scotland) (SNP)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Quinan, Mr Lloyd (West of Scotland) (SNP)
 Radcliffe, Nora (Gordon) (LD)
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)
 Robison, Shona (North-East Scotland) (SNP)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
 Russell, Michael (South of Scotland) (SNP)
 Scott, Tavish (Shetland) (LD)
 Sheridan, Tommy (Glasgow) (SSP)
 Simpson, Dr Richard (Ochil) (Lab)
 Smith, Mrs Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Sturgeon, Nicola (Glasgow) (SNP)
 Swinney, Mr John (North Tayside) (SNP)
 Thomson, Elaine (Aberdeen North) (Lab)
 Wallace, Mr Jim (Orkney) (LD)

Watson, Mike (Glasgow Cathcart) (Lab)
 Welsh, Mr Andrew (Angus) (SNP)
 White, Ms Sandra (Glasgow) (SNP)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)
 Wilson, Andrew (Central Scotland) (SNP)

The Deputy Presiding Officer: The result of the division is: For 16, Against 95, Abstentions 0.

Amendment 25 disagreed to.

Section 2—Debt payment programmes

Amendment 26 moved—[Mrs Lyndsay McIntosh].

The Deputy Presiding Officer: The question is, that amendment 26 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Aitken, Bill (Glasgow) (Con)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Fergusson, Alex (South of Scotland) (Con)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Harding, Mr Keith (Mid Scotland and Fife) (Con)
 Johnstone, Alex (North-East Scotland) (Con)
 McIntosh, Mrs Lyndsay (Central Scotland) (Con)
 McLetchie, David (Lothians) (Con)
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)
 Mundell, David (South of Scotland) (Con)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Young, John (West of Scotland) (Con)

AGAINST

Adam, Brian (North-East Scotland) (SNP)
 Alexander, Ms Wendy (Paisley North) (Lab)
 Baillie, Jackie (Dumbarton) (Lab)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Campbell, Colin (West of Scotland) (SNP)
 Canavan, Dennis (Falkirk West)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Ewing, Dr Winnie (Highlands and Islands) (SNP)
 Ewing, Mrs Margaret (Moray) (SNP)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
 Gibson, Mr Kenneth (Glasgow) (SNP)
 Gillon, Karen (Clydesdale) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)
 Gorrie, Donald (Central Scotland) (LD)
 Grahame, Christine (South of Scotland) (SNP)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (Edinburgh Pentlands) (Lab)
 Hamilton, Mr Duncan (Highlands and Islands) (SNP)
 Harper, Robin (Lothians) (Grn)

Henry, Hugh (Paisley South) (Lab)
 Home Robertson, Mr John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Mr Adam (South of Scotland) (SNP)
 Jackson, Gordon (Glasgow Govan) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lochhead, Richard (North-East Scotland) (SNP)
 Lyon, George (Argyll and Bute) (LD)
 MacAskill, Mr Kenny (Lothians) (SNP)
 MacDonald, Ms Margo (Lothians) (SNP)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 MacKay, Angus (Edinburgh South) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 Marwick, Tricia (Mid Scotland and Fife) (SNP)
 McAllion, Mr John (Dundee East) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McGugan, Irene (North-East Scotland) (SNP)
 McLeod, Fiona (West of Scotland) (SNP)
 McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Murray, Dr Elaine (Dumfries) (Lab)
 Neil, Alex (Central Scotland) (SNP)
 Oldfather, Irene (Cunninghame South) (Lab)
 Paterson, Mr Gil (Central Scotland) (SNP)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Quinan, Mr Lloyd (West of Scotland) (SNP)
 Radcliffe, Nora (Gordon) (LD)
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)
 Robison, Shona (North-East Scotland) (SNP)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
 Sheridan, Tommy (Glasgow) (SSP)
 Simpson, Dr Richard (Ochil) (Lab)
 Smith, Iain (North-East Fife) (LD)
 Sturgeon, Nicola (Glasgow) (SNP)
 Swinney, Mr John (North Tayside) (SNP)
 Thomson, Elaine (Aberdeen North) (Lab)
 Wallace, Mr Jim (Orkney) (LD)
 Watson, Mike (Glasgow Cathcart) (Lab)
 Welsh, Mr Andrew (Angus) (SNP)
 White, Ms Sandra (Glasgow) (SNP)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)
 Wilson, Andrew (Central Scotland) (SNP)

The Deputy Presiding Officer: The result of the division is: For 15, Against 88, Abstentions 0.

Amendment 26 disagreed to.

The Deputy Presiding Officer: Amendment 1 is in a group of its own.

Dr Simpson: At stage 2, Robert Brown lodged an amendment—amendment 32—that was

designed to add flexibility to the information that the debtor must provide about his or her debts in an application for approval of a debt repayment programme.

The Executive sympathised with the intention behind the amendment, but was concerned that it was too vague and could be open to abuse. We undertook to produce a more precisely worded alternative. Amendment 1 fulfils that commitment.

I move amendment 1.

Amendment 1 agreed to.

Amendment 28 moved—[Mrs Lyndsay McIntosh].

The Deputy Presiding Officer: The question is, that amendment 28 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Aitken, Bill (Glasgow) (Con)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Fergusson, Alex (South of Scotland) (Con)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Harding, Mr Keith (Mid Scotland and Fife) (Con)
 Johnstone, Alex (North-East Scotland) (Con)
 McIntosh, Mrs Lyndsay (Central Scotland) (Con)
 McLetchie, David (Lothians) (Con)
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)
 Mundell, David (South of Scotland) (Con)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Young, John (West of Scotland) (Con)

AGAINST

Adam, Brian (North-East Scotland) (SNP)
 Alexander, Ms Wendy (Paisley North) (Lab)
 Baillie, Jackie (Dumbarton) (Lab)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Campbell, Colin (West of Scotland) (SNP)
 Canavan, Dennis (Falkirk West)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
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 Eadie, Helen (Dunfermline East) (Lab)
 Ewing, Dr Winnie (Highlands and Islands) (SNP)
 Ewing, Mrs Margaret (Moray) (SNP)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
 Gibson, Mr Kenneth (Glasgow) (SNP)
 Gillon, Karen (Clydesdale) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)
 Gorrie, Donald (Central Scotland) (LD)
 Grahame, Christine (South of Scotland) (SNP)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (Edinburgh Pentlands) (Lab)
 Hamilton, Mr Duncan (Highlands and Islands) (SNP)
 Harper, Robin (Lothians) (Grn)

Henry, Hugh (Paisley South) (Lab)
 Home Robertson, Mr John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Mr Adam (South of Scotland) (SNP)
 Jackson, Gordon (Glasgow Govan) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lochhead, Richard (North-East Scotland) (SNP)
 Lyon, George (Argyll and Bute) (LD)
 MacAskill, Mr Kenny (Lothians) (SNP)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 MacDonald, Ms Margo (Lothians) (SNP)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 MacKay, Angus (Edinburgh South) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 Marwick, Tricia (Mid Scotland and Fife) (SNP)
 McAllion, Mr John (Dundee East) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McGugan, Irene (North-East Scotland) (SNP)
 McLeish, Henry (Central Fife) (Lab)
 McLeod, Fiona (West of Scotland) (SNP)
 McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Neil, Alex (Central Scotland) (SNP)
 Oldfather, Irene (Cunninghame South) (Lab)
 Paterson, Mr Gil (Central Scotland) (SNP)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Quinan, Mr Lloyd (West of Scotland) (SNP)
 Radcliffe, Nora (Gordon) (LD)
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)
 Robison, Shona (North-East Scotland) (SNP)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
 Russell, Michael (South of Scotland) (SNP)
 Scott, Tavish (Shetland) (LD)
 Sheridan, Tommy (Glasgow) (SSP)
 Simpson, Dr Richard (Ochil) (Lab)
 Smith, Iain (North-East Fife) (LD)
 Smith, Mrs Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Sturgeon, Nicola (Glasgow) (SNP)
 Swinney, Mr John (North Tayside) (SNP)
 Thomson, Elaine (Aberdeen North) (Lab)
 Wallace, Mr Jim (Orkney) (LD)
 Watson, Mike (Glasgow Cathcart) (Lab)
 Welsh, Mr Andrew (Angus) (SNP)
 White, Ms Sandra (Glasgow) (SNP)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)
 Wilson, Andrew (Central Scotland) (SNP)

ABSTENTIONS

Brown, Robert (Glasgow) (LD)

The Deputy Presiding Officer: The result of the division is: For 15, Against 96, Abstentions 1.

Amendment 28 disagreed to.

The Deputy Presiding Officer: Amendment 30 is grouped with amendments 43 and 44.

Mrs McIntosh: The bill implies in section 2(4) that a debt payment programme will ordinarily require the consent of all creditors. However, the bill leaves open the circumstances in which consent may be dispensed with under section 7(2)(g). I believe that the consent of the majority of creditors should be a prerequisite for a debt payment programme and that that should be made explicit in the bill. The problem of the unreasonable creditor could be dealt with by majority consent or by an override procedure that would enable an unreasonable refusal to be disregarded.

If amendment 30 were agreed to, section 7(2)(g) would not be necessary, given that the specification of the circumstances in which consent could be dispensed with would be provided for in the primary legislation. We need to try to strike a balance between protecting the interests of creditors and protecting the interests of debtors. If debt payment programmes operate in such a way as to protect only the interests of the latter, creditors will become unwilling to lend in circumstances in which they are unlikely to be able to recover their loans. The result would be increased financial exclusion.

Amendment 30 seeks to introduce appropriate balance between the parties. A requirement to secure the consent of a majority of creditors would, in turn, secure full approval and commitment from creditors who would be obliged to participate. The Deputy Minister for Justice recognised in the Social Justice Committee meeting on 2 October the threat of financial exclusion resulting from striking an inappropriate balance. He said:

"The scheme is meant for the benefit of creditors as well as debtors, and it will not work if we look after the interests of one group and not of the other. Any undue weight that might be attached to debtor interests could lead to an adverse response by creditors in relation to other matters, which might affect the future contract or credit terms offered to people on low incomes".—[*Official Report, Social Justice Committee*, 2 October 2002; c 3072.]

I move amendment 30.

Tommy Sheridan: Amendment 44 relates to a primary amendment to establish a debt tribunal. Therefore I cannot understand why amendment 44 was selected on its own, given that the amendment on the debt tribunal was not selected. I will not be moving amendment 44.

Dr Simpson: Amendments 30 and 43 seek essentially to achieve the same thing and the Executive is opposed to both for the same reason. Section 2(4) already provides generally for creditors to give consent to a debtor's participation in a debt payment programme. Section 7(2)(g) allows the regulations to provide for circumstances in which that consent can be dispensed with. The question of the level of creditor support required was raised in the Executive's consultation. The independent analysis of responses shows a lack of agreement on what level of creditor support is needed for approval of a debt payment programme. Some considered that a straight majority of creditors was all that was necessary, but others disagreed and put forward other options. We think that it is right that we consider fully the responses and options before coming forward with detailed and, we hope, practical proposals in the regulations, which the Parliament will examine using the affirmative procedure.

Amendment 30 is technically defective, because it does not specify the criteria by which a majority of creditors is to be determined. It does not state whether the number of creditors or the value of the debt would be the determining factor. If the decision were based on numerical considerations, one could have a situation in which the major creditor was not in the majority, even though they had 85 per cent or 90 per cent of the debt, because there were four or five smaller creditors. There is a significant technical problem with amendment 30. It also does not deal with circumstances in which withholding consent is unreasonable.

I will not address amendment 44, as Tommy Sheridan has indicated that he will not move it. I ask for amendment 30 to be withdrawn and for amendment 43 not to be moved. Failing that, those amendments should be rejected.

15:15

Mrs McIntosh: I have consulted my assistant and, in view of the minister's comments that the issue can be dealt with in regulations, I am prepared not to press amendment 30.

Amendment 30, by agreement, withdrawn.

The Deputy Presiding Officer: Amendment 2 is grouped with amendment 32. I point out that, if amendment 2 is agreed to, I cannot call amendment 32, because it will be pre-empted.

Dr Simpson: At stage 2, Cathie Craigie and Robert Brown expressed concerns about the requirement to prescribe an upper monetary limit for the amount of debt and a lower limit for the number of creditors in relation to participation in a debt payment programme. Instead, they wanted section 7(2) to include a permissive power, so that

the conditions for participation might provide for such limits, depending on the results of the consultation exercise.

The analysis of the consultation responses on the upper limit produced a mixed result. There was no agreement on whether there should be such a limit or on what any limit should be. Therefore, it would seem right that the requirement for a prescribed upper monetary limit be reconsidered.

The Executive promised to return to the issue at stage 3. By deleting the requirement, amendment 2 meets the Executive's commitment. There is no corresponding insertion of a permissive power in section 7(2), because that is not necessary. Section 7(1)(a), as further explained by section 7(2)(a) and section 7(2)(b), would enable that to be done.

We should look closely at the balance of the differing views that have been expressed on the issue. In light of the discussions at stage 1, the Executive also sought additional information from CABx, through a survey on the levels of typical voluntary arrangements. We want to take account of that informal information. Therefore, amendment 32 would not be wise at this stage and I respectfully ask Tommy Sheridan not to move it. Of course, the regulations will now be subject to the affirmative resolution procedure.

I move amendment 2.

Tommy Sheridan: As the minister said, discussion in the committee revolved around the issue of whether a maximum limit would be placed on the amount of debt of debtors seeking access to the debt arrangement scheme. All the advice agencies expressed the worry that, if a ceiling that was too low were imposed, a number of debtors would be excluded from the debt arrangement scheme. That would have a dangerous impact on whether future attachment orders would become exceptional.

In light of the minister's words and the nature of amendment 2, I am happy not to move amendment 32. I hope that the advice, information and consultation responses from Citizens Advice Scotland and others will be borne in mind and will become the guideline on access to the debt arrangement scheme. We cannot exclude people on the ground of an arbitrary, low maximum ceiling of debt.

Amendment 2 agreed to.

Section 3—Money advice

The Deputy Presiding Officer: Amendment 34 is in a group on its own.

Robert Brown: I mentioned that I have a history as a former chair of Rutherglen and Cambuslang citizens advice bureau. As might become evident,

I bear the scars of a series of difficult negotiations with various sorts of council from the years in which I held that position. To some extent, that history forms the background of what I am saying today. The serious point that I am making is that, as it is the local authority's responsibility to provide local services, each local authority should be placed under a duty to ensure that independent money advice is available within their area to anyone who might require it under section 3.

I say that against the background of the decisions that were made on the disposal of the £3 million that the Executive provided for the support of money advisers across Scotland as part and parcel of the arrangements for the bill. CAB sources have provided me with a note that shows how that money was used. Despite a new partnership agreement to develop CAB services, East Renfrewshire Council is to keep all the funds for in-house services. North Ayrshire Council, without consulting the CABx, decided to retain all funds for in-house services. Renfrewshire Council decided to spend all its £105,000 on employing three more officers within its advice works department after only a token consultation with the CABx. In my home area of South Lanarkshire, the council allocated £30,000 of the total £177,000 to only two of the four CABx.

The money was similarly divided in the cities, although in slightly more sophisticated ways. Despite a 40 per cent cut in CAB core funding over the period, the City of Edinburgh Council is looking to employ all its money advice staff in-house—although secondment to the CABx may be possible. For Glasgow City Council, £101,000 of the £636,000 that it received will go into four of the eight Glasgow CABx. I think that members in the chamber can get the broad picture that comes out of those figures.

As I said, the precise provision that exists in each area is rightly an issue for local authorities. Obviously, I hope that, in the exercise of their responsibilities, local authorities will pay attention to the importance of independent money advice. However, it is fairly evident that a good degree of council empire building is taking place with the money that the Scottish Executive made available. To be frank, that is not the intention of ministers, the committee or the general public.

Let me touch briefly on the reasons why independent money advice is important. Local councils are often a principal creditor in many debt situations, because they are owed council tax or rent payments. Protocols exist within money advice work about the extent to which one prioritises certain degrees of on-going payment. I have no difficulty in accepting those protocols, which apply whether the money advice is provided in-house or through independent agencies across the board.

The debtor must have a choice. Rightly or wrongly—often wrongly, no doubt—many people will not see council in-house advice as being independent. The advice must not only be independent; it must be seen to be independent. The issue is whether Chinese walls and that sort of thing can be erected.

Amendment 34 would not insist that all advice has to come from the voluntary and independent sectors, but it would insist that there must be a choice. When the minister spoke about the issue at stage 2, he made what I suggest were not compelling points about the wording of the amendment, as he queried what was meant by “independent” and “accessible”. There may be issues about that—although I am bound to say that the average member of the public knows what “independent” and “accessible” mean—but the Executive could have made a commitment to the idea and then amended the phraseology to achieve the objective.

Amendment 34 deals with an important issue of principle. It links in with on-going problems that the Social Justice Committee has harped on about time after time, such as the adequacy of core support for the CAB movement. I believe that amendment 34 would improve the workings of the debt arrangements by making them more accessible and more available. More important, it would make the arrangements more likely to be taken up by the debtors for whose benefit they will be put in place.

I move amendment 34.

Mr John McAllion (Dundee East) (Lab): On a point of order, Presiding Officer. When we debate amendments, is it possible that, subsequent to hearing the mover of the lead amendment, members could hear the ministerial response before they speak to the amendments rather than having to speak to them before hearing what the minister has to say?

The Deputy Presiding Officer: We usually have the minister respond to the entire debate. It is possible for the minister to come in immediately and then speak again at the end of the debate, but on this occasion the minister has not indicated that he wants to come in early. I have the power to call the minister if he wishes to speak.

Johann Lamont (Glasgow Pollok) (Lab): The issue that amendment 34 touches on was raised in the committee and was one of the few issues on which there was real disagreement among committee members.

The Parliament must always be aware of issues of subsidiarity and the responsibility that lies with local authorities to make decisions. We would not want to draw up powers from local authorities on such matters. Amendment 34 implies that local

authority workers who are charged with the responsibility of giving money advice cannot be independent. I am sure that many local authority workers doing that job would not be happy with that implication. I am certainly not happy with it.

It is perfectly possible for advice that is provided by a local authority to be just as independent as advice that is provided by the voluntary sector and—most important—for it to meet just as fully the needs of the person who is seeking that advice. That is not to say that there is not an important role for the voluntary sector to play—clearly, that sector plays a role, as we recognise. However, we must oppose amendment 34 on the ground that it implies that somebody who is given the advice role by a local authority cannot carry out their duty in a responsible way.

We may wish to consider how that work is regulated and monitored and what the local authority's role is in that work, but my experience is that local authorities are not uncomfortable with working in partnership with the voluntary sector. Amendment 34 might create an unnecessary division and an unhelpful implication in relation to the important job of money advisers, wherever they are carrying out the responsible and important role that the bill gives them. I oppose amendment 34.

Donald Gorrie (Central Scotland) (LD): I will speak in favour of amendment 34. Robert Brown is offering choice, not compulsion of any sort. The amendment would give the debtor the choice of going either to an in-house council debt advisory place or to an independent place such as a citizens advice bureau. Choice is a good thing.

The issue is not about in-house council money advisers not being independent; it is about the fact that they might not be seen as independent. The public have a great suspicion of public bodies and their employees. A lot of people who are in debt think that they will not get neutral advice from council advisers, who—it is thought—will naturally put debts to the council, which almost always figure among the debts, at the top of the queue for repayment. The issue is public perception.

Having been in councils for 26 years, I strongly support councils being given as much scope as possible. However, if ministers and the Parliament want independent debt advice to be given, councils should supply money to independent advisers through grants, as well as supplying in-house advice.

I have put questions to ministers on the issue of independence and their answers on the subject have, as usual, been rather unsatisfactory. I also had a short exchange of views with the Minister for Social Justice, Margaret Curran, on how much of the local government money that is given by the

Executive went to debt services. She has kindly written to me to point out that half of the new jobs created are in local authorities—half is a reasonable figure—but that three quarters of the money went to local councils, which gave away only a quarter of the money to CABx and other advice providers. Three quarters of the money produced only half the jobs—we should think about that.

For a whole lot of reasons, members should support amendment 34. It is not anti-local government, but pro-choice. It would give local voluntary organisations, as well as the councils, a fair do and it would help the debtor, which is what I thought the bill was all about.

Karen Whitefield (Airdrie and Shotts) (Lab):

Like my colleague Johann Lamont, I call on members not to support amendment 34. It is, quite frankly, patronising to suggest that local authority employees who offer debt advice do not work in the best interests of their clients. That is most certainly not my experience in North Lanarkshire Council and I do not think that it is the experience of the many people across Scotland who have accessed services over the years—those people will have been given the best-quality advice available and will have been supported throughout the experience.

Although I agree that CABx play a valuable role in providing debt advice and information services, they are not the only organisations, either in the voluntary sector or in local authority settings, that can do that. The Scottish Executive has spent £3 million to provide free independent advice services across Scotland and in so doing—

15:30

Tricia Marwick (Mid Scotland and Fife) (SNP):

Will the member give way?

Karen Whitefield: Let me finish this point.

In so doing, more than half the money adviser positions that have been created have been created within the voluntary sector. That is an important point. It ensures that there is a range of opportunities for people to access free independent advice, whether they want to access it from a local authority or from the independent and voluntary sectors.

Mr Kenneth Gibson (Glasgow) (SNP): Robert Brown and I submitted amendments similar to amendment 34 at stage 2. I am happy to support Robert Brown and I agree with what he and Donald Gorrie said. I do not agree with Karen Whitefield that amendment 34 is patronising. We all accept that local government employees provide independent advice. However, the person who is seeking advice might not see things that

way, given that local authorities are often creditors. As Donald Gorrie said, all that we are trying to do is to provide people with a choice. What is most important is that an individual in debt gets advice. Anything that encourages them to come forward and take that advice is to be commended, so the SNP will be happy to support Robert Brown's amendment 34.

Mr McAllion: I have not made up my mind yet on amendment 34, but I do not believe that anybody should have a virtual monopoly on providing independent advice. In any community, a spectrum of advice should be available, so that people have a choice about whom to go to to seek that advice. Moreover, I do not think that we should get into the business of setting up council employees against employees in the voluntary sector. They are all working in the same area and they are all providing the same kind of service. My experience of welfare rights officers is that they are among the best people to provide advice that one could ever come across in any local community.

I am also wary about saying, "In my experience, North Lanarkshire Council is like this," or, "In my experience, Dundee City Council is like that," because I know about Dundee City Council but I do not know about all the other councils in Scotland. I remind Labour members who speak in that vein that not all councils are Labour councils. Some councils might have policies that prioritise the recovery of debts that are owed to them because of rents, council tax or outstanding poll tax, which is still owed in many areas of Scotland.

Some welfare rights officers may not be allowed to offer advice that runs counter to the policies of the council that employs them. I do not know whether that is the case, but I would like to know whether the minister has done any work on that issue. I would be reluctant for us to get into a position where the only kind of advice that is available locally is advice that says that debts that an individual owes to the council take priority over debts that he or she owes to other agencies, because it might not be in the individual's interest to prioritise debts in that way. I would be grateful if the minister responded to that point when he winds up.

Dr Simpson: The measures proposed in amendment 34 were debated at stage 2, so I do not propose to go over all the ground again. However, it is worth reiterating that we want ready availability of well-informed, well-trained and well-supported money advisers. We have, as members have indicated, funded advice services to the tune of £3 million per annum. Tommy Sheridan asked earlier whether the money advice will be free. The money advice will be free; it will not be charged for.

The terms of amendment 34 are unclear. There is no definition of what is meant by "independent". I know that Robert Brown says that that is self-evident, but his speech did not provide clarification; indeed, it obfuscated the issue. He implies with his amendment that a local authority adviser cannot be independent. His definition of "independent" is clearly at variance with what he understands the public's perception to be of what is meant by "independent". Amendment 34 does not define the phrase "readily accessible", either, although that might be thought to be understandable. We hope that advisers will be readily accessible. Moreover, the amendment does not indicate the extent of the duty that it imposes.

The amendment is unnecessary, because we require local authorities to ensure choice—that deals with Donald Gorrie's comments. That choice is reflected by the division of almost 50:50 in the appointed money advisers. When somebody goes for money advice, they do not say, "Are you three quarters funded because you are from the local authority or one quarter funded because you are from the voluntary sector?" They say, "Do I have a choice of money adviser?" The answer is yes. The money has been allocated to make that division. The spectrum to which John McAllion rightly referred exists. If it did not exist, we would want to examine that. We believe that it exists and that choice is available.

As we said at stage 2, the key issue is not so much choice of money advisers as whether the advice that is given is good quality. The standard that will be attained is of primary importance—Karen Whitefield referred to that. If standards are consistent, independence—whatever that means—in the sense of who provides the service is irrelevant. Quality standards and quality assurance also relate to independence in the sense of the adviser acting in the best interests of the person who consulted them—the debtor—and not in the interests of the local authority or the creditor.

Tricia Marwick: I listened carefully to what the minister said about the independence of money advice officers who work for local authorities. Will he guarantee to local authority money advice workers that their line managers will not put pressure on them to prioritise council tax arrears? That will allow those workers to give truly independent advice.

Dr Simpson: As I tried to say, an adviser acts not on behalf of their employer, but on behalf of a debtor. The debtor's interests alone must have primacy. That is not the undertaking that Tricia Marwick wanted, but I understand that that will be interpreted to mean that any attempt by an employer to suggest that an adviser should not follow best practice will be looked on severely.

Tricia Marwick: Will the minister give way again?

Dr Simpson: No. I covered the point.

Further development and strengthening of standards and quality assurance will be dealt with by the Executive's proposals for enhanced central support for money advice. We have agreed to provide £500,000 of central support for the delivery of money advice training. That shows the Executive's commitment and determination that an adviser must act in the debtor's interests, no matter where that adviser is employed—I repeat that for the last time.

We ask for amendment 34 to be withdrawn; failing that, it should be rejected.

Robert Brown: I listened carefully to the debate, in which many interesting points were made. I accept the minister's assertion of the Executive's good will and the primary objective of making good-quality money advice available to debtors. I do not argue about that.

I suggest to the minister that behind the amendment lie genuine issues about the availability of independent advice. I touched on that situation in one or two earlier examples. If the relevant part of the Executive's £3 million is all allocated to council in-house services, that does not suggest that people in a local authority area will have the choice of which the minister makes much.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): I am listening carefully to Robert Brown. Will he give an example of a constituent who could not obtain independent advice from a local authority?

Robert Brown: I am not aware of the details of debtors who have gone for advice. I will quote again the example from North Ayrshire, but I can give other examples. According to my information, North Ayrshire Council decided to retain £95,000—all the funds that the Executive allocated—for in-house services, without consulting CABx.

John McAllion said that we are not talking about Labour councils only. Indeed, we are not. Angus Council, for example, allocated the CABx £10,000 out of its £50,000. There are examples in councils in which the Liberal Democrats have influence, too. The issue is not about party; it is about the balance between the council, which is responsible for the provision and strategic decisions made at the local level, and the independent sector.

Karen Whitefield suggested that the issue had been dealt with in a patronising manner. I do not accept that. I was careful to say that I was making no challenge to the individual money advisers in councils. I was saying merely that some councils

appeared to be empire building with the money, which is a different issue. The issue is the balance in the availability of advice of various sorts within local authority areas across the country. I hope that the information that I have put before the chamber demonstrates that a balance does not exist in several local authority areas.

Whatever the outcome of the vote, I hope that the minister will reflect on today's debate and, when it comes to regulations, examine whether the legislation can be strengthened, perhaps through output agreements, to ensure that the Executive's objectives are brought about.

My final point is important. It concerns the fact that, although three quarters of the money has gone to local authorities, councils are providing only half the jobs, as Donald Gorrie said. That suggests to me that there are issues about pay, about what is done with the money and perhaps even about value for money. Certainly, there is an issue that has not been addressed in the debate.

I believe that subsidiarity is the right way in which to deal with such matters, but that has to operate within a framework of national standards that sets out what we are trying to achieve. I therefore ask for the chamber's support for amendment 34.

The Deputy Presiding Officer: The question is, that amendment 34 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Adam, Brian (North-East Scotland) (SNP)
 Brown, Robert (Glasgow) (LD)
 Campbell, Colin (West of Scotland) (SNP)
 Canavan, Dennis (Falkirk West)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Ewing, Dr Winnie (Highlands and Islands) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Ewing, Mrs Margaret (Moray) (SNP)
 Gibson, Mr Kenneth (Glasgow) (SNP)
 Gorrie, Donald (Central Scotland) (LD)
 Grahame, Christine (South of Scotland) (SNP)
 Hamilton, Mr Duncan (Highlands and Islands) (SNP)
 Harper, Robin (Lothians) (Grn)
 Hyslop, Fiona (Lothians) (SNP)
 Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
 Lochhead, Richard (North-East Scotland) (SNP)
 MacAskill, Mr Kenny (Lothians) (SNP)
 MacDonald, Ms Margo (Lothians) (SNP)
 Marwick, Tricia (Mid Scotland and Fife) (SNP)
 McGugan, Irene (North-East Scotland) (SNP)
 McLeod, Fiona (West of Scotland) (SNP)
 Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Neil, Alex (Central Scotland) (SNP)
 Paterson, Mr Gil (Central Scotland) (SNP)
 Quinan, Mr Lloyd (West of Scotland) (SNP)
 Radcliffe, Nora (Gordon) (LD)
 Robison, Shona (North-East Scotland) (SNP)

Russell, Michael (South of Scotland) (SNP)
 Scott, Tavish (Shetland) (LD)
 Sheridan, Tommy (Glasgow) (SSP)
 Smith, Iain (North-East Fife) (LD)
 Smith, Mrs Margaret (Edinburgh West) (LD)
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Sturgeon, Nicola (Glasgow) (SNP)
 Swinney, Mr John (North Tayside) (SNP)
 Ullrich, Kay (West of Scotland) (SNP)
 Welsh, Mr Andrew (Angus) (SNP)
 White, Ms Sandra (Glasgow) (SNP)
 Wilson, Andrew (Central Scotland) (SNP)

AGAINST

Aitken, Bill (Glasgow) (Con)
 Alexander, Ms Wendy (Paisley North) (Lab)
 Baillie, Jackie (Dumbarton) (Lab)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Fergusson, Alex (South of Scotland) (Con)
 Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Gillon, Karen (Clydesdale) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (Edinburgh Pentlands) (Lab)
 Harding, Mr Keith (Mid Scotland and Fife) (Con)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, Mr John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Ingram, Mr Adam (South of Scotland) (SNP)
 Jackson, Dr Sylvia (Stirling) (Lab)
 Jackson, Gordon (Glasgow Govan) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 Johnstone, Alex (North-East Scotland) (Con)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lyon, George (Argyll and Bute) (LD)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 MacKay, Angus (Edinburgh South) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McIntosh, Mrs Lyndsay (Central Scotland) (Con)
 McLeish, Henry (Central Fife) (Lab)
 McLetchie, David (Lothians) (Con)
 McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mundell, David (South of Scotland) (Con)

Murray, Dr Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Simpson, Dr Richard (Ochil) (Lab)
 Stephen, Nicol (Aberdeen South) (LD)
 Thomson, Elaine (Aberdeen North) (Lab)
 Wallace, Ben (North-East Scotland) (Con)
 Wallace, Mr Jim (Orkney) (LD)
 Watson, Mike (Glasgow Cathcart) (Lab)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)
 Young, John (West of Scotland) (Con)

ABSTENTIONS

McAllion, Mr John (Dundee East) (Lab)

The Deputy Presiding Officer: The result of the division is: For 40, Against 74, Abstentions 1.

Amendment 34 disagreed to.

Section 4—Effect of debt payment programmes

The Deputy Presiding Officer: Amendment 35 is grouped with amendment 38.

15:45

Tommy Sheridan: Amendments 35 and 38 both attempt to ensure that when debts are being repaid as part of a debt arrangement scheme, they cannot be enforced by the use of other diligences.

It is important to note that when respondents to the Scottish Executive's consultation document, "Enforcement of Civil Obligations in Scotland", were asked whether enforcement should be stopped once a debt arrangement scheme application has been granted, 42 consultees said that it should be stopped while only three said that it should not be. If amendment 35 is disagreed to, it would still be possible to enforce debts that are subject to a debt arrangement scheme. I hope that the minister will address that point, because during stage 2, he said that he would return to the matter. Debts that are subject to a debt arrangement scheme should be ring fenced or protected.

For example, a debtor could agree to pay a mortgage or second loan secured on a house within a debt arrangement scheme. Even if the scheme were approved and payments were being made, it would still be possible for the creditor to serve a calling-up notice against the debt under the Conveyancing and Feudal Reform (Scotland) Act 1970. Such a notice would require the debtor to repay the loan, failing which ownership of the house would be transferred to the creditor.

A calling-up notice is not a diligence; it is a statutory remedy under the 1970 act that arises on

breach of a loan secured on heritable property. It does not operate by decree and is not caught by section 4 as drafted. Amendment 35 would plug that loophole and therefore take on board the almost overwhelming view of respondents to the consultation that debts that are repaid within a debt arrangement scheme should not be subject to enforcement. During stage 2, the minister felt that that point had some validity and promised to examine it. As a result, I hope that he will agree to support amendments 35 and 38.

Amendment 38 would address the situation in which a creditor who gets a decree for payment can use it to serve an inhibition, which prevents a debtor from selling his or her house. I suggest that, if the debt is being repaid within a debt arrangement scheme, it is fair and sensible for any inhibition to fall once the scheme is approved. At present, the bill does not deal with any existing diligence; section 4 prevents future diligence only from being used against debts under the debt arrangement scheme. Again, I refer members to the Executive's recent public consultation, in which 93 per cent of respondents said that enforcement should stop where debts were being repaid with a debt arrangement scheme.

Amendments 35 and 38 are entirely consistent with the results of the Executive's wide-ranging consultation, which the minister said, throughout stage 2, he was awaiting. We have now received those results and he will see that my amendments are in line with them. I hope that that means that he will support my amendments.

I move amendment 35.

Dr Simpson: We discussed and rejected the content of amendments 35 and 38 during stage 2. Both concern what happens to creditors' rights in relation to heritable property when a debtor enters a debt payment scheme, but the bill already provides that all diligence and sequestration will be stopped. Subsections 4(2) and (3) prohibit creditors from commencing or executing any diligence for payment or seeking to sequester a person who participates in a scheme. As that includes inhibition, amendment 38 is unnecessary.

Amendment 35 would have wide-reaching implications for other areas of law, such as contract and property law. The restrictions that are referred to in the amendment would inevitably cause lenders to change their practices.

The Executive has followed the approach of the Scottish Law Commission, which first recommended a debt arrangement scheme in 1985 in its "Report on Diligence and Debtor Protection". We consider that, although 16 years have passed since the Law Commission's report, many of its conclusions on matters of legal principle remain valid today. In our consultation

document, we suggested that heritably secured debt should not be part of a debt arrangement scheme. It is worth noting that that is not, of course, part of the voluntary arrangements on which the bill is intended to build.

Restraints on the calling up of standard securities could be considered appropriately only in a full review of heritable securities over the homes of all debtors, taking account of all the implications for property and contract law.

We must consider any such exemptions both in light of the scheme as a whole and cumulatively. For example, for how long could a debt payment programme run? If it could run for, say, nine years, or if there were no time limit, a lender would be unable to recover potentially valuable property over decades. As we have said before, we would be worried about the effect that that could have on the economy and the availability of mortgages.

We believe that amendment 35 should be withdrawn or, failing that, rejected, and that amendment 38 should not be moved.

Tommy Sheridan: The minister is in danger of over-egging the pudding in relation to the consequences of amendment 35. The idea that the economy will collapse if the amendment is agreed to is scaremongering, to say the least.

The thrust of the bill is the prevention of further diligence or recovery against debts that are already within a debt arrangement scheme. The existing loophole will not be closed unless amendment 35 is agreed to.

The minister says that he does not think that amendment 38 is necessary because its provisions will be covered in the bill. I therefore hoped that the minister would have no problem in supporting it. Given that he thinks that the point is already covered, let us have a wee insurance policy to ensure that there is no problem. I will press amendments 35 and 38.

The Deputy Presiding Officer: The question is, that amendment 35 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Adam, Brian (North-East Scotland) (SNP)
Campbell, Colin (West of Scotland) (SNP)
Canavan, Dennis (Falkirk West)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Ewing, Dr Winnie (Highlands and Islands) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Gibson, Mr Kenneth (Glasgow) (SNP)
Grahame, Christine (South of Scotland) (SNP)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)
Harper, Robin (Lothians) (Grn)
Hyslop, Fiona (Lothians) (SNP)

Ingram, Mr Adam (South of Scotland) (SNP)
Lochhead, Richard (North-East Scotland) (SNP)
MacAskill, Mr Kenny (Lothians) (SNP)
MacDonald, Ms Margo (Lothians) (SNP)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
McAllion, Mr John (Dundee East) (Lab)
McGugan, Irene (North-East Scotland) (SNP)
McLeod, Fiona (West of Scotland) (SNP)
Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
Neil, Alex (Central Scotland) (SNP)
Quinan, Mr Lloyd (West of Scotland) (SNP)
Robison, Shona (North-East Scotland) (SNP)
Russell, Michael (South of Scotland) (SNP)
Sheridan, Tommy (Glasgow) (SSP)
Sturgeon, Nicola (Glasgow) (SNP)
Swinney, Mr John (North Tayside) (SNP)
Ullrich, Kay (West of Scotland) (SNP)
Welsh, Mr Andrew (Angus) (SNP)
White, Ms Sandra (Glasgow) (SNP)
Wilson, Andrew (Central Scotland) (SNP)

AGAINST

Aitken, Bill (Glasgow) (Con)
Alexander, Ms Wendy (Paisley North) (Lab)
Baillie, Jackie (Dumbarton) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Douglas-Hamilton, Lord James (Lothians) (Con)
Eadie, Helen (Dunfermline East) (Lab)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Fergusson, Alex (South of Scotland) (Con)
Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gallie, Phil (South of Scotland) (Con)
Gillon, Karen (Clydesdale) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Goldie, Miss Annabel (West of Scotland) (Con)
Gorrie, Donald (Central Scotland) (LD)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (Edinburgh Pentlands) (Lab)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, Mr John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Jackson, Dr Sylvia (Stirling) (Lab)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
Johnstone, Alex (North-East Scotland) (Con)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lyon, George (Argyll and Bute) (LD)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
MacKay, Angus (Edinburgh South) (Lab)
Maclean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
McLeish, Henry (Central Fife) (Lab)
McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)

McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Mundell, David (South of Scotland) (Con)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Radcliffe, Nora (Gordon) (LD)
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Scott, Tavish (Shetland) (LD)
 Simpson, Dr Richard (Ochil) (Lab)
 Smith, Iain (North-East Fife) (LD)
 Smith, Mrs Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Thomson, Elaine (Aberdeen North) (Lab)
 Wallace, Ben (North-East Scotland) (Con)
 Wallace, Mr Jim (Orkney) (LD)
 Watson, Mike (Glasgow Cathcart) (Lab)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)
 Young, John (West of Scotland) (Con)

The Deputy Presiding Officer: The result of the division is: For 32, Against 81, Abstentions 0.

Amendment 35 disagreed to.

The Deputy Presiding Officer: Amendment 36 is grouped with amendment 45. I call Tommy Sheridan to move amendment 46—sorry, amendment 36.

Tommy Sheridan: I am glad that I am not the only one who is getting confused, Presiding Officer.

Amendment 36 would freeze contractual interest from accruing on debts that are being repaid through debt arrangement schemes. The members of the Social Justice Committee will be aware that many organisations that gave evidence to that committee agreed that if contractual interest on debts cannot be frozen during the operation of debt arrangement schemes, many people will never see an end to multiple debt. It is not uncommon for debtors to have real-terms interest rates of 200 per cent. That is the norm for most clients of advice agencies in Scotland, according to Citizens Advice Scotland's 2001 report.

In short, if contractual interest is not frozen, the debt arrangement scheme might be a failure as a policy initiative. The matter is so important that the whole debt arrangement scheme might fall if

contractual interest is not frozen. I hope that the minister will take on board that grave warning. I also hope that he has listened to the evidence that the advice agencies gave to the Social Justice Committee. Amendment 36 is serious and important. I hope that members will bear it in mind that if there is no freezing of contractual interest and if the measures on the composition of debts are not passed, there will be serious consequences for the ability of the debt arrangement scheme to help debtors throughout Scotland.

I move amendment 36.

Robert Brown: Amendment 45 relates to a not dissimilar issue, which is that of freezing interest and the composition of debt. That issue was referred to during the Social Justice Committee's deliberations and most members of the committee had considerable sympathy with it. We touched earlier on the background to amendment 45, in the debate on Lyndsay McIntosh's amendment 25. Many debtors who receive advice have debts that amount to many thousands of pounds, which they are unlikely to pay in full over any reasonable period.

That situation has a number of effects. The first is that the creditor will not recover their money. The second is that the debtor becomes demoralised, which means that the repayment of even part of the debt is unlikely unless there is a degree of incentive or encouragement to keep up the payments, which might be significant for those who have relatively small incomes. There are many examples—which are not imaginary—of debts that would take 27 years or some such period to repay. In such situations, repayment in full is not likely because people become discouraged and do not carry on their repayments.

In the discussions at stage 2, the deputy minister was sympathetic to the Social Justice Committee's suggestions, but, in opposition, he said that they might overlap with Westminster legislation because of the commercial element. One can understand that. Another question was whether our suggestions overlapped with the European convention on human rights—in particular, the first protocol to the convention. It might be helpful to read from the first article of that protocol, which states:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest".

We are talking about creditors' rights. In common with a number of human rights provisions, that one is not absolute or black and white. Conditions and exceptions are involved and alternative arrangements are possible. For example, in bankruptcy law, creditors receive payment of a dividend—20 per cent, 50 per cent or whatever—in exchange for the full writing-off of the remaining debts.

The principle exists and I accept entirely that it is a complex area in which there is overlap with the Scotland Act 1998, the ECHR provisions, the Human Rights Act 1998 and so on. However, I ask the minister—I hope that I will receive a positive response—to undertake to consider the issue in more detail in the light of the civil diligence review and to return to Parliament on the matter in due course, rather than rule out the possibility of instituting this arrangement at the present time.

16:00

I accept Tommy Sheridan's proposition in introducing the matter, that if the arrangements for the composition of debts and the freezing of interest are not included in the arrangements, that will to some extent undermine the intention of the Executive and the Parliament that there should be success in those areas.

The Deputy Presiding Officer: I can allow Kenny Gibson only long enough to make his point.

Mr Gibson: Thank you, Presiding Officer. We covered the matter to a great extent at stage 1 and I submitted an amendment at stage 2. I support what Mr Sheridan and Mr Brown have said. Although I do not agree that not freezing contractual interest would cause a debt arrangement scheme to fail—that is over-egging the pudding somewhat—I believe that it would damage it. I hope that the Executive will reflect on the comments that have been made at stages 1 and 2 and support Mr Sheridan's amendment 36. I understand that Robert Brown is thinking of not moving amendment 45. If the Executive were to support Mr Sheridan's amendment, we would go some way towards achieving what many members would like to see.

The Deputy First Minister and Minister for Justice (Mr Jim Wallace): As all members who have taken part in the debate have said, the issue was covered in detail at stage 2. As Robert Brown said, my colleague, Richard Simpson expressed at that time some sympathy with the general objective of amendments 36 and 45. I share that sympathy but, for reasons that I shall explain, we do not think that it will be possible to give effect to the amendments.

Since that time, we have received an analysis of the consultation responses. The responses

showed mixed views on whether the composition of debts or the freezing of interest should be imposed on creditors. I do not want to go into the fine detail, but the consultation responses reveal that, of a total of 40 respondents who addressed the issue, 24 were in favour and 14 were against those measures. Those who were in favour were mainly advice agencies that interpreted the consultation question—which asked about discharge on less than full payment—in different ways. Those who were against the amendments were, not surprisingly, mainly creditors who were very strongly opposed to any form of compulsory discharge of debts on less than full payment. There is no reason why creditors cannot voluntarily waive interest payments or write off part, or all, of a debt, as some do at present.

We will consider those views carefully and ensure that they are reflected, as far as possible, in the regulations that will now be subject to affirmative resolution. I stress the phrase "as far as possible", because we would like to allow for waiving interest by agreement between debtor and creditor and, where appropriate, for forgiveness of debt on less than full payment in line with voluntary practice in some negotiated settlements.

We know, from those who are operating voluntary schemes, that some creditors are prepared to freeze interest from the start of the scheme. To do so is often in their best interests. We also know that, towards the end of a scheme, some creditors are prepared to write off outstanding debts if debtors have paid regularly. That might not be in the creditor's best interests, but it represents recognition of the efforts that the debtor has made.

Amendment 36 would prevent any interest that was legally due to accrue on debts from being included in the programme. It would have the effect of overriding legally binding contractual arrangements that had previously been entered into by debtors. We sought legal opinion on whether an amendment could be drafted to provide reassurance that the debt arrangement scheme would allow for, but not compel, the freezing of interest and the writing off of debt without exceeding the legislative competence of the Parliament. Our advice is that it could not, hence the absence of an Executive amendment on the matter.

However desirable it might seem in social policy terms, a freeze on interest simply cannot be achieved with a stroke of the pen. It would override otherwise legally binding contractual arrangements that have been freely entered into and, as Robert Brown said, it would raise serious concerns about the infringement of creditors' rights to property under article 1 of protocol 1 of the European convention on human rights.

The creditor's right to receive full payment of the debt and interest that is due in terms of the contract into which the debtor and creditor have entered may be construed as the creditor's "possession" for the purposes of article 1 of protocol 1. The creditor could waive those rights, but it would be an entirely different matter for those rights to be automatically removed by legislation. On Robert Brown's point about public interest, it is not clear whether removing the creditor's rights would be in the public interest or in the interests of one section of the public—namely, debtors.

Robert Brown referred to the issue of bankruptcy as a possible precedent. However, the nature of bankruptcy is that a debtor's assets are insufficient to meet their debts. Amendments 36 and 45 could mean that a person would be able to pay their debts, but because of actions by the state, part of their obligation would be written off.

If the provisions in amendments 36 and 45 are contrary to the ECHR, as we believe, it would be outwith Parliament's legislative competence to introduce them. Robert Brown said that we could consider the issue in the context of the civil diligence review. I acknowledge the importance that members throughout the chamber attach to the issue of contractual interest in a debt payment programme. We would be willing to ascertain whether there are ways of addressing the matter that are within Parliament's competence. However, I cannot promise anything. Accordingly, I ask Parliament to reject amendments 36 and 45.

Tommy Sheridan: I am disappointed by the minister's response. The issue of contractual interest is of cross-party concern and is clearly a major issue that unites all the benefit advice and money advice agencies. The minister's response is not good enough. Under the bill as amended at stage 2, the minister will have the power to make regulations for sheriffs to deal with creditors' refusal to enter debt arrangement schemes. Either creditors would agree voluntarily to freeze interest or the matter could be referred by ministers to a sheriff.

Therefore, it is not an insurmountable problem to include in the bill the provision to freeze contractual interest in a debt payment programme. To say that that would not comply with the ECHR is, to be frank, a red herring. Amendment 36 is important and I urge Parliament to support it. Without amendment 36, the debt arrangement scheme could be fatally wounded.

The Deputy Presiding Officer: The question is, that amendment 36 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Adam, Brian (North-East Scotland) (SNP)
 Campbell, Colin (West of Scotland) (SNP)
 Canavan, Dennis (Falkirk West)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Ewing, Dr Winnie (Highlands and Islands) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Ewing, Mrs Margaret (Moray) (SNP)
 Gibson, Mr Kenneth (Glasgow) (SNP)
 Gorrie, Donald (Central Scotland) (LD)
 Grahame, Christine (South of Scotland) (SNP)
 Hamilton, Mr Duncan (Highlands and Islands) (SNP)
 Harper, Robin (Lothians) (Grn)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Mr Adam (South of Scotland) (SNP)
 Lochhead, Richard (North-East Scotland) (SNP)
 MacAskill, Mr Kenny (Lothians) (SNP)
 MacDonald, Ms Margo (Lothians) (SNP)
 Marwick, Tricia (Mid Scotland and Fife) (SNP)
 McAllion, Mr John (Dundee East) (Lab)
 McGugan, Irene (North-East Scotland) (SNP)
 McLeod, Fiona (West of Scotland) (SNP)
 Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
 Neil, Alex (Central Scotland) (SNP)
 Paterson, Mr Gil (Central Scotland) (SNP)
 Quinan, Mr Lloyd (West of Scotland) (SNP)
 Robison, Shona (North-East Scotland) (SNP)
 Russell, Michael (South of Scotland) (SNP)
 Sheridan, Tommy (Glasgow) (SSP)
 Sturgeon, Nicola (Glasgow) (SNP)
 Swinney, Mr John (North Tayside) (SNP)
 Ullrich, Kay (West of Scotland) (SNP)
 Welsh, Mr Andrew (Angus) (SNP)
 White, Ms Sandra (Glasgow) (SNP)
 Wilson, Andrew (Central Scotland) (SNP)

AGAINST

Aitken, Bill (Glasgow) (Con)
 Alexander, Ms Wendy (Paisley North) (Lab)
 Baillie, Jackie (Dumbarton) (Lab)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Gillon, Karen (Clydesdale) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (Edinburgh Pentlands) (Lab)
 Harding, Mr Keith (Mid Scotland and Fife) (Con)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, Mr John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Jackson, Dr Sylvia (Stirling) (Lab)
 Jackson, Gordon (Glasgow Govan) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
 Johnstone, Alex (North-East Scotland) (Con)
 Kerr, Mr Andy (East Kilbride) (Lab)

Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lyon, George (Argyll and Bute) (LD)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 MacKay, Angus (Edinburgh South) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McIntosh, Mrs Lyndsay (Central Scotland) (Con)
 McLeish, Henry (Central Fife) (Lab)
 McLetchie, David (Lothians) (Con)
 McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Radcliffe, Nora (Gordon) (LD)
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Scott, Tavish (Shetland) (LD)
 Simpson, Dr Richard (Ochil) (Lab)
 Smith, Iain (North-East Fife) (LD)
 Smith, Mrs Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Thomson, Elaine (Aberdeen North) (Lab)
 Wallace, Ben (North-East Scotland) (Con)
 Wallace, Mr Jim (Orkney) (LD)
 Watson, Mike (Glasgow Cathcart) (Lab)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)
 Young, John (West of Scotland) (Con)

The Deputy Presiding Officer: The result of the division is: For 34, Against 80, Abstentions 0.

Amendment 36 disagreed to.

Amendment 38 moved—[Tommy Sheridan].

The Deputy Presiding Officer: The question is, that amendment 38 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Adam, Brian (North-East Scotland) (SNP)
 Campbell, Colin (West of Scotland) (SNP)
 Canavan, Dennis (Falkirk West)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Ewing, Dr Winnie (Highlands and Islands) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Ewing, Mrs Margaret (Moray) (SNP)

Gibson, Mr Kenneth (Glasgow) (SNP)
 Grahame, Christine (South of Scotland) (SNP)
 Hamilton, Mr Duncan (Highlands and Islands) (SNP)
 Harper, Robin (Lothians) (Grn)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Mr Adam (South of Scotland) (SNP)
 Lochhead, Richard (North-East Scotland) (SNP)
 MacAskill, Mr Kenny (Lothians) (SNP)
 MacDonald, Ms Margo (Lothians) (SNP)
 Marwick, Tricia (Mid Scotland and Fife) (SNP)
 McGugan, Irene (North-East Scotland) (SNP)
 McLeod, Fiona (West of Scotland) (SNP)
 Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
 Neil, Alex (Central Scotland) (SNP)
 Paterson, Mr Gil (Central Scotland) (SNP)
 Quinan, Mr Lloyd (West of Scotland) (SNP)
 Robison, Shona (North-East Scotland) (SNP)
 Sheridan, Tommy (Glasgow) (SSP)
 Sturgeon, Nicola (Glasgow) (SNP)
 Swinney, Mr John (North Tayside) (SNP)
 Ullrich, Kay (West of Scotland) (SNP)
 Welsh, Mr Andrew (Angus) (SNP)
 White, Ms Sandra (Glasgow) (SNP)
 Wilson, Andrew (Central Scotland) (SNP)

AGAINST

Aitken, Bill (Glasgow) (Con)
 Alexander, Ms Wendy (Paisley North) (Lab)
 Baillie, Jackie (Dumbarton) (Lab)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Gillon, Karen (Clydesdale) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Gorrie, Donald (Central Scotland) (LD)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (Edinburgh Pentlands) (Lab)
 Harding, Mr Keith (Mid Scotland and Fife) (Con)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, Mr John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Jackson, Dr Sylvia (Stirling) (Lab)

Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
 Johnstone, Alex (North-East Scotland) (Con)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lyon, George (Argyll and Bute) (LD)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 MacKay, Angus (Edinburgh South) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McAllion, Mr John (Dundee East) (Lab)

McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McIntosh, Mrs Lyndsay (Central Scotland) (Con)
 McLeish, Henry (Central Fife) (Lab)
 McLetchie, David (Lothians) (Con)
 McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Radcliffe, Nora (Gordon) (LD)
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Scott, Tavish (Shetland) (LD)
 Simpson, Dr Richard (Ochil) (Lab)
 Smith, Iain (North-East Fife) (LD)
 Smith, Mrs Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Thomson, Elaine (Aberdeen North) (Lab)
 Wallace, Ben (North-East Scotland) (Con)
 Wallace, Mr Jim (Orkney) (LD)
 Watson, Mike (Glasgow Cathcart) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)
 Young, John (West of Scotland) (Con)

The Deputy Presiding Officer: The result of the division is: For 31, Against 79, Abstentions 0.

Amendment 38 disagreed to.

After section 6

The Deputy Presiding Officer: Amendment 42 is in the name of Tommy Sheridan. As time is now extremely tight, I will call to speak only the movers of amendments, the minister and those who are summing up.

Tommy Sheridan: The introduction at stage 2 of paragraph (fa) to section 7(2) amended the bill to allow the Scottish ministers to introduce regulations to enable the debt arrangement scheme determinations to be appealed against. It is fair to say, therefore, that the minister has already accepted the right of debtors to be entitled to an appeal if they are refused access to a debt arrangement scheme. However, as the bill stands, if a debtor is refused access to a debt arrangement scheme, they have no right of appeal. Amendment 42 would establish a right of appeal. Already, too many of the key principles of the debt arrangement scheme are subject to delegated legislation, something which the Subordinate Legislation Committee found worrying when it considered the bill, and that many others found worrying during stage 2.

Amendment 42 would include in the bill the right for a debtor to appeal if they are not allowed access to a debt arrangement scheme. It would allow a right of recourse to the sheriff for impartial reconsideration of the matter. I make the point that that is a common provision; for example, the Housing (Scotland) Act 2001 permits disgruntled tenants to have access to the sheriff if they are aggrieved about certain formal decisions that have been taken by their landlord. The amendment is both sensible and consistent with other legislation in allowing a debtor the right of appeal in relation to a determination not to allow them access to the debt arrangement scheme.

Amendment 42 is straightforward. It would include in the bill a provision that should be in the bill. I appeal to members and the minister to support the amendment.

I move amendment 42.

Dr Simpson: We believe that amendment 42 is unnecessary. It had been intended that the general power provided by section 7(1) would enable regulations to provide for an appeal mechanism. However, at stage 2, a provision was added to section 7 to provide specifically that the regulations may make provision for appeals against determinations of the Scottish ministers on applications for approval or variation of debt payment programmes.

In addition, amendment 42 would provide that diligence be suspended pending the outcome of the appeal to the sheriff. However, that would have the effect of prejudging the outcome of the appeal. I therefore recommend that Tommy Sheridan seek to withdraw amendment 42.

16:15

The Deputy Presiding Officer: The question is, that amendment 42 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Canavan, Dennis (Falkirk West)
 Harper, Robin (Lothians) (Grn)
 MacDonald, Ms Margo (Lothians) (SNP)
 Sheridan, Tommy (Glasgow) (SSP)

AGAINST

Adam, Brian (North-East Scotland) (SNP)
 Aitken, Bill (Glasgow) (Con)
 Alexander, Ms Wendy (Paisley North) (Lab)
 Baillie, Jackie (Dumbarton) (Lab)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Campbell, Colin (West of Scotland) (SNP)

Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Ewing, Dr Winnie (Highlands and Islands) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Ewing, Mrs Margaret (Moray) (SNP)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Gibson, Mr Kenneth (Glasgow) (SNP)
 Gillon, Karen (Clydesdale) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Gorrie, Donald (Central Scotland) (LD)
 Grahame, Christine (South of Scotland) (SNP)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (Edinburgh Pentlands) (Lab)
 Hamilton, Mr Duncan (Highlands and Islands) (SNP)
 Harding, Mr Keith (Mid Scotland and Fife) (Con)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, Mr John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Mr Adam (South of Scotland) (SNP)
 Jackson, Dr Sylvia (Stirling) (Lab)
 Jackson, Gordon (Glasgow Govan) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
 Johnstone, Alex (North-East Scotland) (Con)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lochhead, Richard (North-East Scotland) (SNP)
 Lyon, George (Argyll and Bute) (LD)
 MacAskill, Mr Kenny (Lothians) (SNP)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 MacKay, Angus (Edinburgh South) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 Marwick, Tricia (Mid Scotland and Fife) (SNP)
 McAllion, Mr John (Dundee East) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McGugan, Irene (North-East Scotland) (SNP)
 McIntosh, Mrs Lyndsay (Central Scotland) (Con)
 McLeish, Henry (Glasgow Central) (Lab)
 McLeod, Fiona (West of Scotland) (SNP)
 McLetchie, David (Lothians) (Con)
 McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)
 Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Neil, Alex (Central Scotland) (SNP)
 Oldfather, Irene (Cunninghame South) (Lab)
 Paterson, Mr Gil (Central Scotland) (SNP)
 Peacock, Peter (Highlands and Islands) (Lab)

Peattie, Cathy (Falkirk East) (Lab)
 Radcliffe, Nora (Gordon) (LD)
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)
 Reid, Mr George (Mid Scotland and Fife) (SNP)
 Robison, Shona (North-East Scotland) (SNP)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Scott, Tavish (Shetland) (LD)
 Simpson, Dr Richard (Ochil) (Lab)
 Smith, Iain (North-East Fife) (LD)
 Smith, Mrs Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Sturgeon, Nicola (Glasgow) (SNP)
 Swinney, Mr John (North Tayside) (SNP)
 Thomson, Elaine (Aberdeen North) (Lab)
 Ullrich, Kay (West of Scotland) (SNP)
 Wallace, Ben (North-East Scotland) (Con)
 Wallace, Mr Jim (Orkney) (LD)
 Watson, Mike (Glasgow Cathcart) (Lab)
 Welsh, Mr Andrew (Angus) (SNP)
 White, Ms Sandra (Glasgow) (SNP)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)
 Wilson, Andrew (Central Scotland) (SNP)
 Young, John (West of Scotland) (Con)

The Deputy Presiding Officer: The result of the division is: For 4, Against 108, Abstentions 0.

Amendment 42 disagreed to.

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

The Deputy Presiding Officer: Amendment 14, in the name of the minister, is grouped with amendment 15. There is time for only the briefest of statements in support of the amendment, minister.

Dr Simpson: Amendments 14 and 15 are technical amendments. Members might recall that at stage 2 Robert Brown lodged amendments 40, 41 and 42 to allow not only debtors, but creditors to apply for variation of a debt payment programme.

Executive amendments 40A and 97 were offered to achieve the same purpose, but with additional clarity. Along with Robert Brown's amendment 42, those amendments were agreed by the committee on 9 October. As a consequence, amendments 14 and 15 are required to reflect the change in the text from debtor to include creditors as well.

I move amendment 14.

Amendment 14 agreed to.

Amendment 15 moved—[Dr Richard Simpson]—and agreed to.

Amendments 43 and 44 not moved.

Amendment 45 moved—[Mr Kenneth Gibson.]

The Deputy Presiding Officer: The question is, that amendment 45 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Adam, Brian (North-East Scotland) (SNP)
Campbell, Colin (West of Scotland) (SNP)
Canavan, Dennis (Falkirk West)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Ewing, Dr Winnie (Highlands and Islands) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Gibson, Mr Kenneth (Glasgow) (SNP)
Gorrie, Donald (Central Scotland) (LD)
Grahame, Christine (South of Scotland) (SNP)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)
Harper, Robin (Lothians) (Grn)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Lochhead, Richard (North-East Scotland) (SNP)
MacAskill, Mr Kenny (Lothians) (SNP)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
McAllion, Mr John (Dundee East) (Lab)
McGugan, Irene (North-East Scotland) (SNP)
McLeod, Fiona (West of Scotland) (SNP)
Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
Neil, Alex (Central Scotland) (SNP)
Reid, Mr George (Mid Scotland and Fife) (SNP)
Robison, Shona (North-East Scotland) (SNP)
Sheridan, Tommy (Glasgow) (SSP)
Sturgeon, Nicola (Glasgow) (SNP)
Swinney, Mr John (North Tayside) (SNP)
Ullrich, Kay (West of Scotland) (SNP)
Welsh, Mr Andrew (Angus) (SNP)
White, Ms Sandra (Glasgow) (SNP)
Wilson, Andrew (Central Scotland) (SNP)
Young, John (West of Scotland) (Con)

AGAINST

Aitken, Bill (Glasgow) (Con)
Alexander, Ms Wendy (Paisley North) (Lab)
Baillie, Jackie (Dumbarton) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Douglas-Hamilton, Lord James (Lothians) (Con)
Eadie, Helen (Dunfermline East) (Lab)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gallie, Phil (South of Scotland) (Con)
Gillon, Karen (Clydesdale) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Goldie, Miss Annabel (West of Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Harding, Mr Keith (Mid Scotland and Fife) (Con)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, Mr John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Jackson, Dr Sylvia (Stirling) (Lab)
Jackson, Gordon (Glasgow Govan) (Lab)

Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
Johnstone, Alex (North-East Scotland) (Con)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lyon, George (Argyll and Bute) (LD)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
MacKay, Angus (Edinburgh South) (Lab)
Maclean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
McLeish, Henry (Central Fife) (Lab)
McLetchie, David (Lothians) (Con)
McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Monteith, Mr Brian (Mid Scotland and Fife) (Con)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Oldfather, Irene (Cunninghame South) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Radcliffe, Nora (Gordon) (LD)
Raffan, Mr Keith (Mid Scotland and Fife) (LD)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland) (LD)
Simpson, Dr Richard (Ochil) (Lab)
Smith, Iain (North-East Fife) (LD)
Smith, Mrs Margaret (Edinburgh West) (LD)
Stephen, Nicol (Aberdeen South) (LD)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
Wallace, Ben (North-East Scotland) (Con)
Wallace, Mr Jim (Orkney) (LD)
Watson, Mike (Glasgow Cathcart) (Lab)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)

ABSTENTIONS

Brown, Robert (Glasgow) (LD)

The Deputy Presiding Officer: The result of the division is: For 32, Against 75, Abstentions 1.

Amendment 45 disagreed to.

The Deputy Presiding Officer: Amendment 90, in the name of the minister, is in a group on its own.

Dr Simpson: Amendment 90 responds to concerns raised during stage 2 about the regulations' providing for public notice of applications. Robert Brown's amendment 43, which was passed during stage 2, deleted the enabling power in section 7, allowing the

regulations to provide for public notice of applications.

The committee felt strongly that means other than public notice should be found to allow creditors who might have been omitted in error from a proposed programme to know about applications so that they could seek to be included. In the light of the committee's serious concerns, the Executive undertook to consider the matter again, so we hope that amendment 90 meets that commitment.

The regulations already provide for establishing and maintaining a register of debt payment programmes. Amendment 90 will add provision that will allow the register to include applications for the approval and variation of debt payment programmes as well as for approved debt payment programmes. This means that bona fide creditors will be able to gain access to the information that they need without any need for public notice of applications to appear in newspapers or the like.

I advise members that analysis of consultation responses on this point suggested a preference for public notice in the form that the Social Justice Committee was concerned about—I know that it was a matter of great concern to the committee. The amendment will enable suitable arrangements to be made in regulations. We will make those as workable and user-friendly as possible for creditors, while protecting debtors' privacy as far as possible.

I move amendment 90.

Amendment 90 agreed to.

Section 10—Attachment

The Deputy Presiding Officer: Amendment 46 is grouped with amendment 47 and both are in Linda Fabiani's name. I invite Linda Fabiani to speak to the amendments and to move amendment 46.

Mr Gibson: Presiding Officer—

The Deputy Presiding Officer: Ms Fabiani is off sick today, I suddenly recall. We have to settle for Kenneth Gibson instead.

Members: Shame!

Mr Gibson: Well, I have my admirers in some quarters. I will be moving all the amendments in Linda Fabiani's name today, because, as you say, Presiding Officer, my colleague is unwell.

Summary warrants do not allow the party being pursued to be heard in court. Whatever the circumstances of the case, natural justice demands that both parties to an action should have the right to be heard. The right to a fair

hearing should not be circumscribed, and it is to Scotland's shame that we have allowed the situation to persist for so long. In the interests of justice and fairness and of maintaining the dignity of our legal system, we should ensure that courts adjudicate only after hearing all the evidence, rather than half the evidence.

There are further significant reasons why we should ensure that both sides to an action have a right to be heard. The European convention on human rights enshrines the right to a fair hearing in legal proceedings. Internationally, the expectation is that fair hearings be granted to all those who are involved in legal proceedings. For the sake of justice, and for Scotland's standing in international comparisons, we must endure that a day in court is available to the defendants of an action.

I urge acceptance of amendments 46 and 47, and I move amendment 46.

Dr Simpson: Amendments 46 and 47 seek to ensure that attachment cannot be used to enforce a summary warrant. We debated this matter at stage 2. It is important to remember that the domestic debtor already enjoys exactly the same protections under the new procedure, regardless of the type of decree that is being enforced and of the type of creditor. I do not think that that has been fully appreciated.

Amendment 46 would also require that, for an attachment to be competent, the creditor and debtor would have to have the right to a hearing. Under the bill, both parties will already receive intimations to attend a hearing for an application for an exceptional attachment order. In the event that an order is granted—that is, only in those cases where the sheriff is persuaded that there are exceptional circumstances—the debtor has a subsequent right of appeal to the sheriff on a point of law.

The real impact of the two amendments would be seriously to undermine the collection of moneys due to central Government and local government, which are the only creditors that can use summary warrants. That would have a similar impact on all of us, as taxpayers. Amendments 46 and 47 should be rejected.

Mr Gibson: I will press both the amendments. Natural justice should be overwhelming. In this case, I believe that the bill as currently drafted does not allow for that.

The Deputy Presiding Officer: The question is, that amendment 46 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Adam, Brian (North-East Scotland) (SNP)
 Campbell, Colin (West of Scotland) (SNP)
 Canavan, Dennis (Falkirk West)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Ewing, Dr Winnie (Highlands and Islands) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Ewing, Mrs Margaret (Moray) (SNP)
 Gibson, Mr Kenneth (Glasgow) (SNP)
 Grahame, Christine (South of Scotland) (SNP)
 Hamilton, Mr Duncan (Highlands and Islands) (SNP)
 Harper, Robin (Lothians) (Grn)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Mr Adam (South of Scotland) (SNP)
 Lochhead, Richard (North-East Scotland) (SNP)
 MacAskill, Mr Kenny (Lothians) (SNP)
 MacDonald, Ms Margo (Lothians) (SNP)
 Marwick, Tricia (Mid Scotland and Fife) (SNP)
 McGugan, Irene (North-East Scotland) (SNP)
 McLeod, Fiona (West of Scotland) (SNP)
 Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
 Neil, Alex (Central Scotland) (SNP)
 Paterson, Mr Gil (Central Scotland) (SNP)
 Quinan, Mr Lloyd (West of Scotland) (SNP)
 Robison, Shona (North-East Scotland) (SNP)
 Russell, Michael (South of Scotland) (SNP)
 Sheridan, Tommy (Glasgow) (SSP)
 Sturgeon, Nicola (Glasgow) (SNP)
 Swinney, Mr John (North Tayside) (SNP)
 Ullrich, Kay (West of Scotland) (SNP)
 Welsh, Mr Andrew (Angus) (SNP)
 White, Ms Sandra (Glasgow) (SNP)
 Wilson, Andrew (Central Scotland) (SNP)

AGAINST

Aitken, Bill (Glasgow) (Con)
 Alexander, Ms Wendy (Paisley North) (Lab)
 Baillie, Jackie (Dumbarton) (Lab)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
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 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Gillon, Karen (Clydesdale) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Gorrie, Donald (Central Scotland) (LD)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (Edinburgh Pentlands) (Lab)
 Harding, Mr Keith (Mid Scotland and Fife) (Con)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, Mr John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Jackson, Dr Sylvia (Stirling) (Lab)
 Jackson, Gordon (Glasgow Govan) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
 Johnstone, Alex (North-East Scotland) (Con)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)

Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lyon, George (Argyll and Bute) (LD)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 MacKay, Angus (Edinburgh South) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McAllion, Mr John (Dundee East) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McIntosh, Mrs Lyndsay (Central Scotland) (Con)
 McLeish, Henry (Central Fife) (Lab)
 McLetchie, David (Lothians) (Con)
 McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Radcliffe, Nora (Gordon) (LD)
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Simpson, Dr Richard (Ochil) (Lab)
 Smith, Iain (North-East Fife) (LD)
 Smith, Mrs Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Thomson, Elaine (Aberdeen North) (Lab)
 Wallace, Ben (North-East Scotland) (Con)
 Wallace, Mr Jim (Orkney) (LD)
 Watson, Mike (Glasgow Cathcart) (Lab)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)
 Young, John (West of Scotland) (Con)

The Deputy Presiding Officer: The result of the division is: For 32, Against 81, Abstentions 0.

Amendment 46 disagreed to.

Amendment 47 moved—[Mr Kenneth Gibson].

The Deputy Presiding Officer: The question is, that amendment 47 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Adam, Brian (North-East Scotland) (SNP)
 Campbell, Colin (West of Scotland) (SNP)
 Canavan, Dennis (Falkirk West)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Ewing, Dr Winnie (Highlands and Islands) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Ewing, Mrs Margaret (Moray) (SNP)
 Gibson, Mr Kenneth (Glasgow) (SNP)

Grahame, Christine (South of Scotland) (SNP)
 Hamilton, Mr Duncan (Highlands and Islands) (SNP)
 Harper, Robin (Lothians) (Grn)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Mr Adam (South of Scotland) (SNP)
 Lochhead, Richard (North-East Scotland) (SNP)
 MacAskill, Mr Kenny (Lothians) (SNP)
 MacDonald, Ms Margo (Lothians) (SNP)
 McGugan, Irene (North-East Scotland) (SNP)
 McLeod, Fiona (West of Scotland) (SNP)
 Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
 Neil, Alex (Central Scotland) (SNP)
 Paterson, Mr Gil (Central Scotland) (SNP)
 Robison, Shona (North-East Scotland) (SNP)
 Russell, Michael (South of Scotland) (SNP)
 Sheridan, Tommy (Glasgow) (SSP)
 Sturgeon, Nicola (Glasgow) (SNP)
 Swinney, Mr John (North Tayside) (SNP)
 Ullrich, Kay (West of Scotland) (SNP)
 Welsh, Mr Andrew (Angus) (SNP)
 White, Ms Sandra (Glasgow) (SNP)
 Wilson, Andrew (Central Scotland) (SNP)

AGAINST

Aitken, Bill (Glasgow) (Con)
 Baillie, Jackie (Dumbarton) (Lab)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Gillon, Karen (Clydesdale) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Gorrie, Donald (Central Scotland) (LD)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (Edinburgh Pentlands) (Lab)
 Harding, Mr Keith (Mid Scotland and Fife) (Con)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, Mr John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Jackson, Dr Sylvia (Stirling) (Lab)
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 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
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 Kerr, Mr Andy (East Kilbride) (Lab)
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 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McAllion, Mr John (Dundee East) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McIntosh, Mrs Lyndsay (Central Scotland) (Con)

McLeish, Henry (Central Fife) (Lab)
 McLetchie, David (Lothians) (Con)
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 McNulty, Des (Clydebank and Milngavie) (Lab)
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 Murray, Dr Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
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 Robson, Euan (Roxburgh and Berwickshire) (LD)
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 Scott, John (Ayr) (Con)
 Simpson, Dr Richard (Ochil) (Lab)
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 Thomson, Elaine (Aberdeen North) (Lab)
 Wallace, Ben (North-East Scotland) (Con)
 Wallace, Mr Jim (Orkney) (LD)
 Watson, Mike (Glasgow Cathcart) (Lab)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

The Deputy Presiding Officer: The result of the division is: For 30, Against 77, Abstentions 0.

Amendment 47 disagreed to.

Section 11—Articles exempt from attachment

The Deputy Presiding Officer: The next amendment for debate is amendment 48, which is grouped with amendment 49. I invite Karen Whitefield to move amendment 48.

Karen Whitefield: Amendment 48 would extend the list of articles in section 11 that cannot be attached, to include gardening equipment such as lawnmowers and spades.

I have lodged the amendment because the items in question are normally kept not in a dwelling-house, but in a garage or garden shed. It is particularly important that those items should not be attached because, under their tenancy agreements, many local authority and housing association tenants are required to keep their gardens neat and tidy. If they do not have the equipment to do that, it will be impossible for them to comply with their tenancy agreements. I urge members to support the amendment.

I move amendment 48.

The Deputy Presiding Officer: I invite Kenny Gibson to speak to amendment 49.

Mr Gibson: The SNP is prepared to allow the Scottish ministers to add protections to the bill where that is appropriate, but if they want to

remove protections, they should have the courage to argue the case for doing so in Parliament.

At stage 1, the Subordinate Legislation Committee, in particular, expressed concern that the bill gave too much power to ministers. Ministers argued that that was a result of the tight timetable for consideration of the bill and the need to replace poindings and warrant sales. However, their claim is not borne out by our experience of other bills. We can only surmise that ministers do not want scrutiny of their proposed legislation to be too close and prefer to introduce a series of statutory instruments that contain tiny pieces of legislation that we must put together like a jigsaw in order to get the big picture. I ask the Executive to prove that that is not the case by supporting amendment 49.

The SNP supports amendment 48, which seeks to prevent the attachment of gardening equipment.

I know that ministers will argue that part 2 of the bill relates to commercial debt. However, the minister has failed to separate commercial debt from domestic debt, with the result that a simple attachment, rather than an exceptional attachment, may be used to pursue a domestic debt. The consequences of that failure may be horrendous. The protections that exist under exceptional attachment orders and that are listed in schedule 2 do not apply to simple attachments to domestic debt. The Executive will have removed the protections that some debtors currently have.

16:30

Ms Margo MacDonald (Lothians) (SNP): I shall take only a minute, because I do not mean to comment on the policy content of the bill. I speak as the convener of the Subordinate Legislation Committee. My committee and I want to point out that the Executive's timetabling of the bill gave the committee inadequate time to consider stage 2 amendments. The committee was able only to consider the bill briefly yesterday and the Executive's memorandum arrived only the evening before that. As a result, the committee has been unable to produce a paper report in time to inform the Parliament in general and on this debate in particular.

I would therefore like to record the committee's unhappiness at being put in that position, particularly as the bureau had agreed to a paper setting out reasonable timetables for my committee's scrutiny as recently as September. I appreciate that lots of people do not understand the workings of the Subordinate Legislation Committee, but I have to inform the Parliament that when regulations touch as closely on people's lives as do those that will be made under this bill,

we take a very close interest in them. We have not had time to scrutinise the bill properly.

Dr Simpson: We welcome amendment 48, which would extend the list of items that would be exempt from the attachment. The reasons that Karen Whitefield gave are very clear. It seems sensible to include on the list gardening equipment that is reasonably required to keep debtors' gardens in good order.

Amendment 49 raises an issue that was discussed with the Subordinate Legislation Committee on 25 June. The aim of section 11(2)(a) is to allow the list of items to be added to, deleted or varied according to circumstances, such as changes in the economic or social climate and technological developments. The list includes computer equipment, which would probably not have been included had the bill been in place 15 years ago. In practice it is unlikely that anything will be deleted from the list, but we do not know now whether or how quickly technological advance will lead to obsolescence. The only example that I could come up with—it is probably not a very good one—is a mangle, which is something that most people would probably not recognise today, unless they are of a certain age. I see nods from Christine Grahame and others. However, a mangle might be an antique by now and therefore of value, so we would want to remove it from the list. That might not be the best of examples, but it is the only one that I could come up with. In our view, it is preferable to retain a degree of flexibility. The important thing is that any change in the list would follow consultation.

In response to Margo MacDonald's contribution, I accept that the timetable for the bill has been extremely tight. Everyone will be familiar with the reasons for that, which were beyond the Executive's control. I realise that that has placed a considerable burden on everyone involved and I welcome warmly the way in which colleagues have risen to the challenge. I regret the fact that the Executive memorandum to the Subordinate Legislation Committee could not be produced earlier, but I must stress that that is not intended to mark a lack of respect for the committee's important role, particularly when it discusses measures that affect people's livelihoods. The committee will note that the Executive has responded positively to its principal concerns.

We support amendment 48 and oppose amendment 49.

The Deputy Presiding Officer: Does Ms Whitefield wish to say anything else?

Karen Whitefield: No.

The Deputy Presiding Officer: I assume that she wants to press amendment 48.

Amendment 48 agreed to.

Amendment 49 moved—[Mr Kenneth Gibson].

The Deputy Presiding Officer: The question is, that amendment 49 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Adam, Brian (North-East Scotland) (SNP)
 Campbell, Colin (West of Scotland) (SNP)
 Canavan, Dennis (Falkirk West)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Ewing, Dr Winnie (Highlands and Islands) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Ewing, Mrs Margaret (Moray) (SNP)
 Gibson, Mr Kenneth (Glasgow) (SNP)
 Grahame, Christine (South of Scotland) (SNP)
 Hamilton, Mr Duncan (Highlands and Islands) (SNP)
 Harper, Robin (Lothians) (Grn)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Mr Adam (South of Scotland) (SNP)
 Lochhead, Richard (North-East Scotland) (SNP)
 MacAskill, Mr Kenny (Lothians) (SNP)
 MacDonald, Ms Margo (Lothians) (SNP)
 Marwick, Tricia (Mid Scotland and Fife) (SNP)
 McGugan, Irene (North-East Scotland) (SNP)
 McLeod, Fiona (West of Scotland) (SNP)
 Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
 Neil, Alex (Central Scotland) (SNP)
 Paterson, Mr Gil (Central Scotland) (SNP)
 Quinan, Mr Lloyd (West of Scotland) (SNP)
 Robison, Shona (North-East Scotland) (SNP)
 Russell, Michael (South of Scotland) (SNP)
 Sheridan, Tommy (Glasgow) (SSP)
 Sturgeon, Nicola (Glasgow) (SNP)
 Swinney, Mr John (North Tayside) (SNP)
 Ullrich, Kay (West of Scotland) (SNP)
 Welsh, Mr Andrew (Angus) (SNP)
 White, Ms Sandra (Glasgow) (SNP)
 Wilson, Andrew (Central Scotland) (SNP)

AGAINST

Aitken, Bill (Glasgow) (Con)
 Alexander, Ms Wendy (Paisley North) (Lab)
 Baillie, Jackie (Dumbarton) (Lab)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Gillon, Karen (Clydesdale) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)
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 Muldoon, Bristow (Livingston) (Lab)
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 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
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 Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Scott, Tavish (Shetland) (LD)
 Simpson, Dr Richard (Ochil) (Lab)
 Smith, Iain (North-East Fife) (LD)
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 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Thomson, Elaine (Aberdeen North) (Lab)
 Wallace, Mr Jim (Orkney) (LD)
 Watson, Mike (Glasgow Cathcart) (Lab)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)
 Young, John (West of Scotland) (Con)

The Deputy Presiding Officer: The result of the division is: For 32, Against 81, Abstentions 0.

Amendment 49 disagreed to.

Section 12—Times when attachment is not competent

The Deputy Presiding Officer: Amendment 3 is grouped with amendment 50.

Dr Simpson: As I indicated when the Social Justice Committee discussed Kenny Gibson's amendment 110 at stage 2, on 9 October, we would have been well disposed towards workable amendments on the provision—indeed, we encouraged suggestions. Kenny Gibson's amendment 110 was rejected at stage 2 on the ground that it was insufficiently specific.

In requiring the compilation of a centrally held list, Kenny Gibson's stage 3 amendment—amendment 50—would be an unnecessarily bureaucratic and costly solution.

I indicated that, at stage 3, we would be willing to reconsider how to extend the section 12 provision to include holidays that were widely observed out of social convention, rather than specifically for religious observance. Amendment 3 seeks to achieve that by recognising local and national holidays. I recommend that amendment 50 not be moved or be rejected.

I move amendment 3.

Mr Gibson: Amendment 50 is a follow-on to my amendment 110 at stage 2, which the minister has commented on. The purpose of amendment 50 is to ensure that the bill recognises that Scotland is a multicultural society of many faiths and none. By proposing that the taking of any action on days that are special to non-Christians should be prevented, it seeks to ensure that their beliefs are taken cognisance of when the execution of an attachment is sought.

I acknowledge that, by moving amendment 3, the minister has recognised the issue and has sought to remove specifically Christian references. We will support amendment 3, which is positive. However, because many public holidays have a religious basis, we believe that, in an equalities sense, amendment 3 does not go far enough.

Amendment 50 would allow the Executive to identify days that have a resonance for minority communities in Scotland; it would not create a bureaucratic imposition on the Executive. The proposed paragraph (a) that amendment 50 would insert in section 12(1) would allow the Executive three months to identify the relevant occasions and the proposed paragraph (b) would prevent an attachment if such days related to the debtor.

The identification of such days would not be difficult. If someone is from a Sikh or a Muslim community, for example, days that are sensitive to those communities should be avoided when an attachment is to be executed. Just as an attachment will not be executed on Christmas day because it is sensitive to the Christian community—regardless of whether the subject of the attachment is a churchgoer—a member of the Jewish community should not suffer attachment at Yom Kippur or Rosh Hashanah.

One of the objections that Robert Brown raised to my amendment 110 at stage 2 was that someone could say that any day was sensitive to them. That is hardly the case. In any event, amendment 50 would not prevent an attachment—it would simply allow for a delay of a day or two at best, without offending the debtor unnecessarily.

The Deputy Presiding Officer: I will allow Robert Brown to make a very brief contribution.

Robert Brown: I want to speak against amendment 50, which is misconceived in the extreme. Although I understand where Mr Gibson is coming from, the reason for the holidays being listed in section 12 is not that they are days of religious significance, but that they are public holidays. That is the important aspect. There must be an objective element in such matters. Amendment 50 would completely remove such an element. We cannot allow a determination that has a subjective relevance to the debtor. We can allow only what is ascertainable objectively.

Dr Simpson: I want to reject amendment 50, which refers to:

“a day of religious or cultural celebration which ... is of relevance to the debtor.”

Although such days would be specified in a list, the proposal could lead to endless debate about what was an appropriate cultural celebration. Amendment 50 should be rejected, because it is inappropriate.

Amendment 3 agreed to.

Amendment 50 moved—[Mr Kenneth Gibson].

The Deputy Presiding Officer: The question is, that amendment 50 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Adam, Brian (North-East Scotland) (SNP)
Campbell, Colin (West of Scotland) (SNP)
Canavan, Dennis (Falkirk West)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Ewing, Dr Winnie (Highlands and Islands) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Gibson, Mr Kenneth (Glasgow) (SNP)
Grahame, Christine (South of Scotland) (SNP)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)
Hyslop, Fiona (Lothians) (SNP)
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AGAINST

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 McAllion, Mr John (Dundee East) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McIntosh, Mrs Lyndsay (Central Scotland) (Con)
 McLeish, Henry (Central Fife) (Lab)
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 McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)
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 McNeill, Pauline (Glasgow Kelvin) (Lab)
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 Murray, Dr Elaine (Dumfries) (Lab)

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 Scanlon, Mary (Highlands and Islands) (Con)
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 Smith, Mrs Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Thomson, Elaine (Aberdeen North) (Lab)
 Wallace, Mr Jim (Orkney) (LD)
 Watson, Mike (Glasgow Cathcart) (Lab)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)
 Young, John (West of Scotland) (Con)

ABSTENTIONS

Harper, Robin (Lothians) (Grn)

The Deputy Presiding Officer: The result of the division is: For 31, Against 77, Abstentions 1.

Amendment 50 disagreed to.

Section 13—Presumption of ownership

The Deputy Presiding Officer: Amendment 51 is in a group on its own. I call Kenny Gibson to speak to and move the amendment.

Mr Gibson: I will be brief. After going through all the rigmarole of inquiring about ownership as required by section 13, the officer reaches the stage of section 13(4), which allows the officer to assume that an article belongs to the debtor unless it can be proven otherwise at the time. Section 13 does not give adequate protection to persons whose property may be in the possession of the debtor at the time. Amendment 51 would simply provide for a period of time during which documentary evidence to establish ownership could be provided in order to prevent loss to third parties.

I move amendment 51.

Dr Simpson: In executing an attachment, the officer may, after making inquiries, presume that all assets in the debtor's possession belong to the debtor, either solely or in common with a third party. That presumption will apply unless or until evidence has been shown to the contrary.

Amendment 51 would provide that that presumption could not be relied upon if evidence to the contrary was produced within 24 days. That is unnecessary, because section 13 already makes it clear that the presumption applies unless there is evidence to the contrary. The purpose behind referring to a 24-day period of delay is therefore unclear.

Under section 34, a third party already has a right to have his or her property released from attachment at any time before it is sold at auction. Sections 35 and 36 apply the same protection to assets that are owned in common by the debtor and a third party.

Amendment 51 is in any event defective because it fails to specify who may present the evidence and fails to provide for the procedure by which the place of the ministers' choosing is to be determined.

If amendment 51 is not withdrawn, I recommend that it be rejected.

Mr Gibson: Given the minister's comments, I am happy to withdraw amendment 51.

Amendment 51, by agreement, withdrawn.

Section 15—Power of entry and valuation

The Deputy Presiding Officer: Amendment 52 is grouped with amendment 57. I call Mr Gibson to speak to both amendments and to move amendment 52.

Mr Gibson: Again, I will be brief. Amendment 52 deals with a public order consideration. The authority that we grant to persons to open, shut and lockfast premises must be strictly controlled. The best way of achieving that is to oblige the person with the power to be accompanied by an officer of the law.

I move amendment 52.

Dr Simpson: Amendments 52 and 57 would mean that, when an officer needed to open, shut and lockfast places, he would have to be accompanied by a constable. That would apply in non-domestic cases. We believe that that is unnecessary, because an officer can ask the police for assistance if he or she deems that to be necessary.

The bill does not need to make a specific provision to impose the requirement for a police presence in every case without the officer assessing the need for such a presence in any individual situation. Such a provision would place an unnecessary burden on police resources for no good reason. We recommend that amendment 52 be withdrawn and that amendment 57, if moved, be rejected.

16:45

The Deputy Presiding Officer: Mr Gibson, do you wish to wind up?

Mr Gibson: I shall press both amendment 52 and amendment 57.

An officer cannot always predict what circumstances he or she will encounter when

approaching premises. There may be dispute as to what happened when lockfast premises were entered. Amendments 52 and 57 would simply ensure that no such dispute would occur, and that is in the interests of all parties.

The Deputy Presiding Officer: The question is, that amendment 52 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Adam, Brian (North-East Scotland) (SNP)
Campbell, Colin (West of Scotland) (SNP)
Canavan, Dennis (Falkirk West)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Ewing, Dr Winnie (Highlands and Islands) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Gibson, Mr Kenneth (Glasgow) (SNP)
Grahame, Christine (South of Scotland) (SNP)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)
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Russell, Michael (South of Scotland) (SNP)
Sturgeon, Nicola (Glasgow) (SNP)
Swinney, Mr John (North Tayside) (SNP)
Ullrich, Kay (West of Scotland) (SNP)
Welsh, Mr Andrew (Angus) (SNP)
White, Ms Sandra (Glasgow) (SNP)
Wilson, Andrew (Central Scotland) (SNP)

AGAINST

Alexander, Ms Wendy (Paisley North) (Lab)
Baillie, Jackie (Dumbarton) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Douglas-Hamilton, Lord James (Lothians) (Con)
Eadie, Helen (Dunfermline East) (Lab)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gallie, Phil (South of Scotland) (Con)
Gillon, Karen (Clydesdale) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Goldie, Miss Annabel (West of Scotland) (Con)
Gorrie, Donald (Central Scotland) (LD)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (Edinburgh Pentlands) (Lab)
Harding, Mr Keith (Mid Scotland and Fife) (Con)
Henry, Hugh (Paisley South) (Lab)

Home Robertson, Mr John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Jackson, Dr Sylvia (Stirling) (Lab)
 Jackson, Gordon (Glasgow Govan) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
 Johnstone, Alex (North-East Scotland) (Con)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lyon, George (Argyll and Bute) (LD)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 MacKay, Angus (Edinburgh South) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McAllion, Mr John (Dundee East) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McIntosh, Mrs Lyndsay (Central Scotland) (Con)
 McLeish, Henry (Central Fife) (Lab)
 McLetchie, David (Lothians) (Con)
 McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Radcliffe, Nora (Gordon) (LD)
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Scott, Tavish (Shetland) (LD)
 Sheridan, Tommy (Glasgow) (SSP)
 Simpson, Dr Richard (Ochil) (Lab)
 Smith, Iain (North-East Fife) (LD)
 Smith, Mrs Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Thomson, Elaine (Aberdeen North) (Lab)
 Watson, Mike (Glasgow Cathcart) (Lab)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)
 Young, John (West of Scotland) (Con)

ABSTENTIONS

Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)

The Deputy Presiding Officer: The result of the division is: For 30, Against 78, Abstentions 1.

Amendment 52 disagreed to.

The Deputy Presiding Officer: Amendment 53 is grouped with amendments 54, 55, 56, 59, 63, 64, 67, 68, 77, 78, 79, 80, 81, 82, 83, 85 and 87.

Dr Simpson: This group of amendments—all of which deal with practical arrangements for valuing and removing articles attached under the

procedures set out in the bill—falls into three smaller groups, each dealing with a particular aspect. I shall address each in turn.

The first of those smaller groups, comprising amendments 53 and 59, extends the time period for a sheriff to consider the report of an attachment. That will allow a greater opportunity to deal with any dispute about the valuation of the assets. Amendment 114, agreed during stage 2, provided that a debtor could apply for an order that an attachment should cease to have effect, or that a sheriff could so decide of his or her own accord, if he or she considered it appropriate. It also changed the point at which the 14-day period for that would start.

When we looked again at section 15(4), as amended, it became clear that timing difficulties would arise from the amended provision. Two 14-day periods were foreseen—the first for submitting a report of attachment, and the second for the sheriff making a decision on whether the attachment was to cease to have effect. As the bill currently stands, those periods would run concurrently. That means that the sheriff might receive the report of the attachment on the last day that he is allowed to make an order that the attachment is to cease to have effect. That was not the intention. Amendments 53 and 59 therefore provide that the sheriff can make an order that the attachment should cease to have effect up to the day before the day on which the auction of the attached goods is to be held. That seems to us to be the most sensible approach.

All the other amendments in the group respond to a concern raised by both Robert Brown and Kenny Gibson during stage 2 about the practical arrangements for attachment under an exceptional attachment order. They each lodged amendments that sought to insert into the procedure an additional step, on a separate day, for the valuation of assets. We debated that point at length and the Executive's concerns and opposition to the amendments were explained in detail. Some of the members' amendments were withdrawn and others rejected, but members asked us to have further discussions with sheriff officers, who will be charged with carrying out the procedure in practice, to be sure that it would work smoothly. Those discussions have taken place, and the amendments are the result. They are a response to the concerns raised by Robert Brown and Kenny Gibson and to the discussion with the sheriff officers.

The second smaller group of amendments—amendments 56, 79 and 80—deal with a potential difficulty when a particular asset, such as a piano, requires specialist handling. For obvious reasons, arrangements should be made for the carriage of any such assets to be undertaken by a specialist carrier.

Tommy Sheridan: The minister mentioned a piano, which may have been a non-specific example. Articles that are used for educational purposes are excluded. Does he agree that a piano is an example of one such article that would be excluded?

Dr Simpson: Not necessarily, because there are houses in which there are pianos that are not particularly functional and which are not being used for any purpose, or where there are no children. Therefore the pianos would not be being used for an educational purpose. We did not include a blanket exemption for pianos—we did not put them on the list of exempt items, and we do not intend to do so.

Amendment 79 provides that assets need not be removed immediately from a dwelling-house where it would be impractical to do so. In that event, amendment 80 provides that notice must be given to the debtor of when they will be removed. On any such occasion, it would also be necessary for section 16, which concerns unlawful acts after attachment, to be applied. Amendment 56 is a consequential amendment for that purpose.

All the other amendments in the group—amendments 54, 55, 63, 64, 67, 68, 77, 78, 81, 82, 83, 85 and 87—are for the same purpose. The lead amendment of that smaller group is amendment 77, and the others are consequential. Amendment 77 confirms that assets that are being attached under an exceptional attachment order will be valued at the price that they would be likely to fetch on the open market.

Open-market valuation of assets attached under an exceptional attachment order is already expressed elsewhere in the bill, with the practical arrangements to be covered in the rules of court. Amendment 77 confirms that an estimate of what assets would attract on the open market will be made. It will not—and we need to be absolutely clear about this—be done on a separate occasion, but at the same time as the assets are removed. There simply is no need for entry to a house on two occasions. That would be intrusive and would also add to the costs. It is also unnecessary in view of the new procedures that are proposed elsewhere in the bill.

Let me underline the key point: assets can be removed from a debtor's home only at the end of a lengthy process during which the debtor will have received ample warning of what could happen, along with numerous opportunities to seek a negotiated settlement. The process includes the requirement for creditors to attempt to negotiate a settlement with debtors; the requirement to explore other means of enforcement; the requirement to provide advice and information; the requirement to have the matter considered by the court in the specific circumstances; the opportunity

for voluntary declaration; and the option for the court to order an adviser visit.

We need to bear in mind the fact that what we are talking about here is only for the very few difficult cases where an exceptional—I repeat: exceptional—attachment order becomes necessary for the few who can pay but persistently refuse to pay. Other ways have been found to assist those who can pay to do so.

The amendments in the group cover the Social Justice Committee's point and have been lodged in direct response to its request.

I move amendment 53.

Amendment 53 agreed to.

Section 16—Unlawful acts after attachment

Amendments 54 to 56 moved—[Dr Richard Simpson]—and agreed to.

Section 20—Removal and auction of attached articles

Amendment 57 moved—[Mr Kenneth Gibson].

The Deputy Presiding Officer (Mr George Reid): The question is, that amendment 57 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Adam, Brian (North-East Scotland) (SNP)
Campbell, Colin (West of Scotland) (SNP)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Ewing, Dr Winnie (Highlands and Islands) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Gibson, Mr Kenneth (Glasgow) (SNP)
Grahame, Christine (South of Scotland) (SNP)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Lochhead, Richard (North-East Scotland) (SNP)
MacAskill, Mr Kenny (Lothians) (SNP)
MacDonald, Ms Margo (Lothians) (SNP)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
McGugan, Irene (North-East Scotland) (SNP)
McLeod, Fiona (West of Scotland) (SNP)
Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
Neil, Alex (Central Scotland) (SNP)
Paterson, Mr Gil (Central Scotland) (SNP)
Robison, Shona (North-East Scotland) (SNP)
Sturgeon, Nicola (Glasgow) (SNP)
Swinney, Mr John (North Tayside) (SNP)
Welsh, Mr Andrew (Angus) (SNP)
White, Ms Sandra (Glasgow) (SNP)
Wilson, Andrew (Central Scotland) (SNP)

AGAINST

Alexander, Ms Wendy (Paisley North) (Lab)
Baillie, Jackie (Dumbarton) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
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 Canavan, Dennis (Falkirk West)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
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 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Fergusson, Alex (South of Scotland) (Con)
 Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Gillon, Karen (Clydesdale) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Gorrie, Donald (Central Scotland) (LD)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (Edinburgh Pentlands) (Lab)
 Harding, Mr Keith (Mid Scotland and Fife) (Con)
 Harper, Robin (Lothians) (Grn)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, Mr John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Jackson, Dr Sylvia (Stirling) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
 Johnstone, Alex (North-East Scotland) (Con)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lyon, George (Argyll and Bute) (LD)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 MacKay, Angus (Edinburgh South) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McAllion, Mr John (Dundee East) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McIntosh, Mrs Lyndsay (Central Scotland) (Con)
 McLeish, Henry (Central Fife) (Lab)
 McLetchie, David (Lothians) (Con)
 McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Radcliffe, Nora (Gordon) (LD)
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Scott, Tavish (Shetland) (LD)
 Sheridan, Tommy (Glasgow) (SSP)
 Simpson, Dr Richard (Ochil) (Lab)

Smith, Iain (North-East Fife) (LD)
 Smith, Mrs Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Thomson, Elaine (Aberdeen North) (Lab)
 Watson, Mike (Glasgow Cathcart) (Lab)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)
 Young, John (West of Scotland) (Con)

The Deputy Presiding Officer: The result of the division is: For 26, Against 82, Abstentions 0.

Amendment 57 disagreed to.

Section 22—Release of vehicle from attachment

The Deputy Presiding Officer: I call Mr Gibson to speak to and move amendment 58.

Mr Gibson: Amendment 58 would increase the time that is given to sell an attached vehicle. The bill allows 14 days, but as many members know, that is unlikely to be sufficient time to sell a vehicle successfully. A sale in such circumstances would be unlikely to generate the best price, which would be to the detriment of the debtor and the creditor. With 28 days, more time would be allowed to sell the vehicle at a good price, which would assist both parties. The debtor would realise the best sum to set against their debt and the creditor would receive more.

I move amendment 58.

Dr Simpson: Section 22 protects vehicles from attachment in some circumstances, for example, when the car is necessary for the owner to travel to work or to reach regular medical treatment in a rural area that is not serviced by public transport. The sheriff has discretion to decide when holding an auction would qualify as undue harshness, according to the debtor's circumstances. That section is based on a Scottish Law Commission recommendation.

When a vehicle's value is more than £1,000, section 22(3) allows the sheriff to order its sale. Section 22(5) means that if a vehicle cannot be sold in 14 days, the vehicle's attachment will cease to have effect.

Amendment 58 would increase the time limit from 14 days to 28 days. That would decrease the debtor's protection, because if the vehicle is not sold within the time limit, the attachment ceases to have effect and the vehicle reverts to the debtor's possession. Amendment 58 should be rejected.

Mr Gibson: There is a balance to be struck. For the reasons that I have given, I think that 28 days is a reasonable time and would protect the debtor and the creditor. I will press amendment 58.

The Deputy Presiding Officer: The question is, that amendment 58 be agreed to. Are we agreed?

Members: No.

17:00

The Deputy Presiding Officer: There will be a division.

FOR

Adam, Brian (North-East Scotland) (SNP)
Campbell, Colin (West of Scotland) (SNP)
Canavan, Dennis (Falkirk West)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Ewing, Dr Winnie (Highlands and Islands) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Gibson, Mr Kenneth (Glasgow) (SNP)
Grahame, Christine (South of Scotland) (SNP)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)
Harper, Robin (Lothians) (Grn)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Lochhead, Richard (North-East Scotland) (SNP)
MacAskill, Mr Kenny (Lothians) (SNP)
MacDonald, Ms Margo (Lothians) (SNP)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Matheson, Michael (Central Scotland) (SNP)
McGugan, Irene (North-East Scotland) (SNP)
McLeod, Fiona (West of Scotland) (SNP)
Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
Neil, Alex (Central Scotland) (SNP)
Paterson, Mr Gil (Central Scotland) (SNP)
Quinan, Mr Lloyd (West of Scotland) (SNP)
Robison, Shona (North-East Scotland) (SNP)
Sheridan, Tommy (Glasgow) (SSP)
Sturgeon, Nicola (Glasgow) (SNP)
Swinney, Mr John (North Tayside) (SNP)
Ullrich, Kay (West of Scotland) (SNP)
Welsh, Mr Andrew (Angus) (SNP)
White, Ms Sandra (Glasgow) (SNP)
Wilson, Andrew (Central Scotland) (SNP)

AGAINST

Alexander, Ms Wendy (Paisley North) (Lab)
Baillie, Jackie (Dumbarton) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Douglas-Hamilton, Lord James (Lothians) (Con)
Eadie, Helen (Dunfermline East) (Lab)
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Fergusson, Alex (South of Scotland) (Con)
Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
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Harding, Mr Keith (Mid Scotland and Fife) (Con)
Henry, Hugh (Paisley South) (Lab)

Home Robertson, Mr John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Jackson, Dr Sylvia (Stirling) (Lab)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
Johnstone, Alex (North-East Scotland) (Con)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lyon, George (Argyll and Bute) (LD)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
MacKay, Angus (Edinburgh South) (Lab)
Maclean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McAllion, Mr John (Dundee East) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
McLeish, Henry (Central Fife) (Lab)
McLetchie, David (Lothians) (Con)
McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Monteith, Mr Brian (Mid Scotland and Fife) (Con)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Oldfather, Irene (Cunninghame South) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Radcliffe, Nora (Gordon) (LD)
Raffan, Mr Keith (Mid Scotland and Fife) (LD)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland) (LD)
Simpson, Dr Richard (Ochil) (Lab)
Smith, Iain (North-East Fife) (LD)
Smith, Mrs Margaret (Edinburgh West) (LD)
Stephen, Nicol (Aberdeen South) (LD)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
Thomson, Elaine (Aberdeen North) (Lab)
Tosh, Mr Murray (South of Scotland) (Con)
Watson, Mike (Glasgow Cathcart) (Lab)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)
Young, John (West of Scotland) (Con)

The Deputy Presiding Officer: The result of the division is: For 32, Against 81, Abstentions 0.

Amendment 58 disagreed to.

After section 22

Amendment 59 moved—[Dr Richard Simpson]—and agreed to.

Section 23—Duration of attachment

The Deputy Presiding Officer: Amendment 60, in the name of Mr Gibson, is in a group on its own.

Mr Gibson: The amendment came out of evidence that was heard at stage 1. Its intention is to extend the period of attachment to 12 months, thus giving the debtor more time to pay and reducing the number of debtors who would then proceed to exceptional attachment with all the distress that that might entail.

I move amendment 60.

Dr Simpson: Amendment 60 would extend the duration of the period after which an attachment may cease to have effect from six to 12 months. Section 23 provides that an attachment will cease to have effect if no further action is taken within six months of the attachment or 28 days of the removal of the attached article from the place at which it was attached, whichever is the earlier.

The amendment is unnecessary because extensions to the period are allowed under section 23(2), under which the sheriff, on application by either the creditor or the officer, may make an extension beyond the usual six-month limit. The sheriff may do so when the delay has been caused through no fault of the creditor or when the debtor is likely to comply with an agreement between the creditor and debtor for repayment of the debt that is due by instalments. Further extensions are provided for anyway by section 28(4)(b) where an auction has been cancelled and a date is specified in an exceptional attachment order.

Accordingly, amendment 60 should be withdrawn or rejected.

The Deputy Presiding Officer: Mr Gibson, do you want to press the amendment?

Mr Gibson: Yes.

The Deputy Presiding Officer: The question is, that amendment 60 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Adam, Brian (North-East Scotland) (SNP)
Campbell, Colin (West of Scotland) (SNP)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Ewing, Dr Winnie (Highlands and Islands) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Gibson, Mr Kenneth (Glasgow) (SNP)
Grahame, Christine (South of Scotland) (SNP)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Lochhead, Richard (North-East Scotland) (SNP)
MacAskill, Mr Kenny (Lothians) (SNP)

MacDonald, Ms Margo (Lothians) (SNP)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Matheson, Michael (Central Scotland) (SNP)
McGugan, Irene (North-East Scotland) (SNP)
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Neil, Alex (Central Scotland) (SNP)
Paterson, Mr Gil (Central Scotland) (SNP)
Quinan, Mr Lloyd (West of Scotland) (SNP)
Robison, Shona (North-East Scotland) (SNP)
Russell, Michael (South of Scotland) (SNP)
Sturgeon, Nicola (Glasgow) (SNP)
Swinney, Mr John (North Tayside) (SNP)
Ullrich, Kay (West of Scotland) (SNP)
Welsh, Mr Andrew (Angus) (SNP)
White, Ms Sandra (Glasgow) (SNP)
Wilson, Andrew (Central Scotland) (SNP)

AGAINST

Alexander, Ms Wendy (Paisley North) (Lab)
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Curran, Ms Margaret (Glasgow Baillieston) (Lab)
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Gallie, Phil (South of Scotland) (Con)
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Home Robertson, Mr John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Jackson, Dr Sylvia (Stirling) (Lab)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
Johnstone, Alex (North-East Scotland) (Con)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lyon, George (Argyll and Bute) (LD)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
MacKay, Angus (Edinburgh South) (Lab)
Maclean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McAllion, Mr John (Dundee East) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
McLeish, Henry (Central Fife) (Lab)
McLetchie, David (Lothians) (Con)
McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)

McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Radcliffe, Nora (Gordon) (LD)
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Scott, Tavish (Shetland) (LD)
 Sheridan, Tommy (Glasgow) (SSP)
 Simpson, Dr Richard (Ochil) (Lab)
 Smith, Iain (North-East Fife) (LD)
 Smith, Mrs Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Thomson, Elaine (Aberdeen North) (Lab)
 Tosh, Mr Murray (South of Scotland) (Con)
 Watson, Mike (Glasgow Cathcart) (Lab)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)
 Young, John (West of Scotland) (Con)

ABSTENTIONS

Harper, Robin (Lothians) (Grn)

The Deputy Presiding Officer: The result of the division is: For 30, Against 83, Abstentions 1.

Amendment 60 disagreed to.

Section 26—Notice of public auction

The Deputy Presiding Officer: I call Mr Gibson to speak to and move amendment 61.

Mr Gibson: Amendment 61 secures for debtors at least seven days' notice of the removal of attached articles. As current legislation contains such a safeguard, it seems somewhat draconian not to retain it. With this amendment, the debtor will be provided with additional time to make payment or payment arrangements and avoid the implementation of exceptional attachment orders. Moreover, third parties will be able to arrange for the release of their own possessions from attachment. As it is surely too harsh to carry out an order without such notice, I ask the chamber to support the amendment.

I move amendment 61.

Tommy Sheridan: I want to support amendment 61. It is a draconian step too far, even for this Executive, to allow sheriff officers to turn up without any notice whatever at a debtor's home and gain entry by removing the locks. In that respect, the legislation is worse than the Debtors

(Scotland) Act 1987. At least the 1987 act provided for a minimum of four days' notice, which usually meant that seven days' notice would be given. If the chamber does not accept the amendment, it will make the provision worse than it is at present, because there will be no notice. If there is notice, a debtor who—for whatever reason—has not sought proper assistance, will at least have a wee seven days' breathing space to seek help. As most people who work at the coalface and who give advice to debtors point out, it sometimes takes a final notice of sanction for people to seek assistance. From that point of view, amendment 61 is absolutely necessary if the bill is not to become one of the most draconian pieces of legislation that has ever been introduced.

Robin Harper (Lothians) (Green): I also support amendment 61. Without the proviso that it contains, the bill will cause people unnecessary fear and alarm.

Dr Simpson: I am tempted just to read out the first sentence of my brief, which says that amendment 61 is unnecessary and that the bill already does what it seeks to provide, but I will explain the situation, because the member who has moved the amendment clearly does not understand that.

Section 26(2) provides that the debtor must be notified of the details of an auction. Under section 26(2)(a), the notification must specify the date of auction and, under section 26(2)(c), the date for removal of assets. As section 20(6) makes clear, it is not possible for the date of removal to be fewer than seven days before the auction date. As a result, amendment 61 is unnecessary and should be rejected.

Mr Gibson: I will press amendment 61, given that amendment 80 says that

"the officer shall give notice to the debtor"

and yet no time period has been specified.

The Deputy Presiding Officer: The question is, that amendment 61 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Adam, Brian (North-East Scotland) (SNP)
 Campbell, Colin (West of Scotland) (SNP)
 Canavan, Dennis (Falkirk West)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Ewing, Dr Winnie (Highlands and Islands) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Ewing, Mrs Margaret (Moray) (SNP)
 Gibson, Mr Kenneth (Glasgow) (SNP)
 Gorrie, Donald (Central Scotland) (LD)
 Grahame, Christine (South of Scotland) (SNP)
 Harper, Robin (Lothians) (Grn)
 Hyslop, Fiona (Lothians) (SNP)

Ingram, Mr Adam (South of Scotland) (SNP)
 Lochhead, Richard (North-East Scotland) (SNP)
 MacAskill, Mr Kenny (Lothians) (SNP)
 MacDonald, Ms Margo (Lothians) (SNP)
 Marwick, Tricia (Mid Scotland and Fife) (SNP)
 Matheson, Michael (Central Scotland) (SNP)
 McGugan, Irene (North-East Scotland) (SNP)
 McLeod, Fiona (West of Scotland) (SNP)
 Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Neil, Alex (Central Scotland) (SNP)
 Paterson, Mr Gil (Central Scotland) (SNP)
 Robison, Shona (North-East Scotland) (SNP)
 Russell, Michael (South of Scotland) (SNP)
 Sheridan, Tommy (Glasgow) (SSP)
 Sturgeon, Nicola (Glasgow) (SNP)
 Swinney, Mr John (North Tayside) (SNP)
 Ullrich, Kay (West of Scotland) (SNP)
 Welsh, Mr Andrew (Angus) (SNP)
 White, Ms Sandra (Glasgow) (SNP)
 Wilson, Andrew (Central Scotland) (SNP)

AGAINST

Alexander, Ms Wendy (Paisley North) (Lab)
 Baillie, Jackie (Dumbarton) (Lab)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Fergusson, Alex (South of Scotland) (Con)
 Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Gillon, Karen (Clydesdale) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (Edinburgh Pentlands) (Lab)
 Hamilton, Mr Duncan (Highlands and Islands) (SNP)
 Harding, Mr Keith (Mid Scotland and Fife) (Con)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, Mr John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Jackson, Dr Sylvia (Stirling) (Lab)
 Jackson, Gordon (Glasgow Govan) (Lab)

Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
 Johnstone, Alex (North-East Scotland) (Con)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lyon, George (Argyll and Bute) (LD)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 MacKay, Angus (Edinburgh South) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McAllion, Mr John (Dundee East) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)

McIntosh, Mrs Lyndsay (Central Scotland) (Con)
 McLeish, Henry (Central Fife) (Lab)
 McLetchie, David (Lothians) (Con)
 McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Murray, Dr Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Radcliffe, Nora (Gordon) (LD)
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Scott, Tavish (Shetland) (LD)
 Simpson, Dr Richard (Ochil) (Lab)
 Smith, Iain (North-East Fife) (LD)
 Smith, Mrs Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Thomson, Elaine (Aberdeen North) (Lab)
 Tosh, Mr Murray (South of Scotland) (Con)
 Watson, Mike (Glasgow Cathcart) (Lab)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)
 Young, John (West of Scotland) (Con)

The Deputy Presiding Officer: The result of the division is: For 33, Against 78, Abstentions 0.

Amendment 61 disagreed to.

Section 30—Disposal of proceeds of auction

The Deputy Presiding Officer: Amendment 62 is grouped with amendment 65.

Mr Gibson: Amendment 62 seeks to ensure that the principal debt is paid off before the fees of sheriff officers are paid. One of the complaints that was made about poindings and warrant sales was that they often did not clear the debt; the money went to pay sheriff officers. Amendment 62 would ensure that the opposite happens.

When an item is not sold at an auction the creditor has the right to claim it. When the creditor claims it, under section 30(2), the value of the article is credited against the sum recoverable. Amendment 65 would ensure that the value of the article is credited even when the creditor does not bother to claim the article.

I move amendment 62.

Dr Simpson: Section 30(1) provides for the proceeds of the auction to be applied in a particular order: first they go to meet the expenses of the enforcement procedure and then they go to the creditor to meet the debt, with any surplus paid to the debtor. When the sum due is not realised, ownership of any unsold articles will pass to the

creditor, in which case their value will be credited against the debt due, under section 30(2).

We believe that amendment 62 is unnecessary. When the expenses chargeable against the debtor cannot be recovered from the debtor, the creditor who instructed the attachment is always liable for them.

Amendment 65 would both return to the debtor the attached assets, which had not been uplifted, and reduce the debt by their value. That would benefit the debtor twice and would not achieve a fair balance.

Amendment 62 should be withdrawn or, failing that, rejected, and amendment 65 should not be moved.

Mr Gibson: I will press the amendments.

The Deputy Presiding Officer: The question is, that amendment 62 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Adam, Brian (North-East Scotland) (SNP)
 Campbell, Colin (West of Scotland) (SNP)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Ewing, Dr Winnie (Highlands and Islands) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Ewing, Mrs Margaret (Moray) (SNP)
 Gibson, Mr Kenneth (Glasgow) (SNP)
 Grahame, Christine (South of Scotland) (SNP)
 Hamilton, Mr Duncan (Highlands and Islands) (SNP)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Mr Adam (South of Scotland) (SNP)
 Lochhead, Richard (North-East Scotland) (SNP)
 MacAskill, Mr Kenny (Lothians) (SNP)
 MacDonald, Ms Margo (Lothians) (SNP)
 Marwick, Tricia (Mid Scotland and Fife) (SNP)
 Matheson, Michael (Central Scotland) (SNP)
 McGugan, Irene (North-East Scotland) (SNP)
 McLeod, Fiona (West of Scotland) (SNP)
 Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
 Neil, Alex (Central Scotland) (SNP)
 Paterson, Mr Gil (Central Scotland) (SNP)
 Quinan, Mr Lloyd (West of Scotland) (SNP)
 Robison, Shona (North-East Scotland) (SNP)
 Russell, Michael (South of Scotland) (SNP)
 Sheridan, Tommy (Glasgow) (SSP)
 Sturgeon, Nicola (Glasgow) (SNP)
 Swinney, Mr John (North Tayside) (SNP)
 Ullrich, Kay (West of Scotland) (SNP)
 Welsh, Mr Andrew (Angus) (SNP)
 White, Ms Sandra (Glasgow) (SNP)
 Wilson, Andrew (Central Scotland) (SNP)

AGAINST

Alexander, Ms Wendy (Paisley North) (Lab)
 Baillie, Jackie (Dumbarton) (Lab)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Canavan, Dennis (Falkirk West)

Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Fergusson, Alex (South of Scotland) (Con)
 Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Gillon, Karen (Clydesdale) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Gorrie, Donald (Central Scotland) (LD)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (Edinburgh Pentlands) (Lab)
 Harding, Mr Keith (Mid Scotland and Fife) (Con)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, Mr John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Jackson, Dr Sylvia (Stirling) (Lab)
 Jackson, Gordon (Glasgow Govan) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
 Johnstone, Alex (North-East Scotland) (Con)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lyon, George (Argyll and Bute) (LD)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 MacKay, Angus (Edinburgh South) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McAllion, Mr John (Dundee East) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McIntosh, Mrs Lyndsay (Central Scotland) (Con)
 McLeish, Henry (Central Fife) (Lab)
 McLetchie, David (Lothians) (Con)
 McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Radcliffe, Nora (Gordon) (LD)
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Scott, Tavish (Shetland) (LD)
 Simpson, Dr Richard (Ochil) (Lab)
 Smith, Iain (North-East Fife) (LD)
 Smith, Mrs Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Thomson, Elaine (Aberdeen North) (Lab)

Tosh, Mr Murray (South of Scotland) (Con)
 Watson, Mike (Glasgow Cathcart) (Lab)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)
 Young, John (West of Scotland) (Con)

ABSTENTIONS

Harper, Robin (Lothians) (Grn)

17:15

The Deputy Presiding Officer: The result of the division is: For 31, Against 81, Abstentions 1.

Amendment 62 disagreed to.

Amendments 63 and 64 moved—[Dr Richard Simpson]—and agreed to.

Amendment 65 moved—[Mr Kenneth Gibson].

The Deputy Presiding Officer: The question is, that amendment 65 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Adam, Brian (North-East Scotland) (SNP)
 Campbell, Colin (West of Scotland) (SNP)
 Canavan, Dennis (Falkirk West)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Ewing, Dr Winnie (Highlands and Islands) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Ewing, Mrs Margaret (Moray) (SNP)
 Gibson, Mr Kenneth (Glasgow) (SNP)
 Grahame, Christine (South of Scotland) (SNP)
 Hamilton, Mr Duncan (Highlands and Islands) (SNP)
 Harper, Robin (Lothians) (Grn)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Mr Adam (South of Scotland) (SNP)
 Lochhead, Richard (North-East Scotland) (SNP)
 MacAskill, Mr Kenny (Lothians) (SNP)
 MacDonald, Ms Margo (Lothians) (SNP)
 Marwick, Tricia (Mid Scotland and Fife) (SNP)
 Matheson, Michael (Central Scotland) (SNP)
 McGugan, Irene (North-East Scotland) (SNP)
 McLeod, Fiona (West of Scotland) (SNP)
 Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
 Neil, Alex (Central Scotland) (SNP)
 Paterson, Mr Gil (Central Scotland) (SNP)
 Quinan, Mr Lloyd (West of Scotland) (SNP)
 Russell, Michael (South of Scotland) (SNP)
 Sheridan, Tommy (Glasgow) (SSP)
 Sturgeon, Nicola (Glasgow) (SNP)
 Swinney, Mr John (North Tayside) (SNP)
 Ullrich, Kay (West of Scotland) (SNP)
 Welsh, Mr Andrew (Angus) (SNP)
 White, Ms Sandra (Glasgow) (SNP)
 Wilson, Andrew (Central Scotland) (SNP)

AGAINST

Alexander, Ms Wendy (Paisley North) (Lab)
 Baillie, Jackie (Dumbarton) (Lab)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)

Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
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 Goldie, Miss Annabel (West of Scotland) (Con)
 Gorrie, Donald (Central Scotland) (LD)
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 Harding, Mr Keith (Mid Scotland and Fife) (Con)
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 Home Robertson, Mr John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Jackson, Dr Sylvia (Stirling) (Lab)
 Jackson, Gordon (Glasgow Govan) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
 Johnstone, Alex (North-East Scotland) (Con)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lyon, George (Argyll and Bute) (LD)
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 Macintosh, Mr Kenneth (Eastwood) (Lab)
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 McCabe, Mr Tom (Hamilton South) (Lab)
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 McLeish, Henry (Central Fife) (Lab)
 McLetchie, David (Lothians) (Con)
 McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
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 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Radcliffe, Nora (Gordon) (LD)
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Scott, Tavish (Shetland) (LD)
 Simpson, Dr Richard (Ochil) (Lab)
 Smith, Iain (North-East Fife) (LD)
 Smith, Mrs Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Thomson, Elaine (Aberdeen North) (Lab)
 Tosh, Mr Murray (South of Scotland) (Con)

Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)
 Young, John (West of Scotland) (Con)

The Deputy Presiding Officer: The result of the division is: For 32, Against 79, Abstentions 0.

Amendment 65 disagreed to.

Section 35—Articles in common ownership

The Deputy Presiding Officer: Amendment 66 is in a group on its own.

Mr Gibson: As section 35 stands, a person who owns an article in common with a defaulting debtor will be liable for part of a bad debt as a result of that common bond. As a result of being a co-owner of an item, the third party faces either paying a debt that is not theirs or losing an asset. That cannot be viewed as fair in all circumstances. An individual who does not have the necessary finances to buy out the debtor's interest will lose an asset through no fault of their own. As an alternative to forcing debt on innocent bystanders, amendment 66 would alter section 35 by allowing the sheriff to decide the appropriate disposal of the item.

I move amendment 66.

Dr Simpson: Section 35(1) allows articles that are owned jointly by a debtor and a third party to be attached and sold in satisfaction of the debtor's debt. Section 35(2) allows the third party to make a claim, before the auction, to buy the debtor's interest in the article. By doing so, the third party becomes the sole owner of the article. Amendment 66 would remove that possibility because it would leave disposal to the discretion of the sheriff. That would involve a hearing in each case, which would place a burden on the courts that is not necessary if the third party can make a claim by dealing directly with the officer. The amendment would open up the possibility of the sheriff making a different disposal and the only other reasonable possibility would be for the item to be returned to the debtor on payment to the third party. However, as the bill stands, the debtor could do that by buying the third party's share and redeeming the article. Accordingly, amendment 66 should be withdrawn.

The Deputy Presiding Officer: The question is, that amendment 66 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Adam, Brian (North-East Scotland) (SNP)
 Campbell, Colin (West of Scotland) (SNP)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Ewing, Dr Winnie (Highlands and Islands) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)

Ewing, Mrs Margaret (Moray) (SNP)
 Gibson, Mr Kenneth (Glasgow) (SNP)
 Grahame, Christine (South of Scotland) (SNP)
 Hamilton, Mr Duncan (Highlands and Islands) (SNP)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Mr Adam (South of Scotland) (SNP)
 Lochhead, Richard (North-East Scotland) (SNP)
 MacAskill, Mr Kenny (Lothians) (SNP)
 MacDonald, Ms Margo (Lothians) (SNP)
 Marwick, Tricia (Mid Scotland and Fife) (SNP)
 Matheson, Michael (Central Scotland) (SNP)
 McGugan, Irene (North-East Scotland) (SNP)
 McLeod, Fiona (West of Scotland) (SNP)
 Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
 Neil, Alex (Central Scotland) (SNP)
 Paterson, Mr Gil (Central Scotland) (SNP)
 Quinan, Mr Lloyd (West of Scotland) (SNP)
 Robison, Shona (North-East Scotland) (SNP)
 Russell, Michael (South of Scotland) (SNP)
 Sturgeon, Nicola (Glasgow) (SNP)
 Swinney, Mr John (North Tayside) (SNP)
 Ullrich, Kay (West of Scotland) (SNP)
 Welsh, Mr Andrew (Angus) (SNP)
 White, Ms Sandra (Glasgow) (SNP)
 Wilson, Andrew (Central Scotland) (SNP)

AGAINST

Alexander, Ms Wendy (Paisley North) (Lab)
 Baillie, Jackie (Dumbarton) (Lab)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Canavan, Dennis (Falkirk West)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Fergusson, Alex (South of Scotland) (Con)
 Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Gillon, Karen (Clydesdale) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Gorrie, Donald (Central Scotland) (LD)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (Edinburgh Pentlands) (Lab)
 Harding, Mr Keith (Mid Scotland and Fife) (Con)
 Harper, Robin (Lothians) (Grn)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, Mr John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Jackson, Dr Sylvia (Stirling) (Lab)
 Jackson, Gordon (Glasgow Govan) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
 Johnstone, Alex (North-East Scotland) (Con)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lyon, George (Argyll and Bute) (LD)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 MacKay, Angus (Edinburgh South) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)

Martin, Paul (Glasgow Springburn) (Lab)
 McAllion, Mr John (Dundee East) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McIntosh, Mrs Lyndsay (Central Scotland) (Con)
 McLeish, Henry (Central Fife) (Lab)
 McLetchie, David (Lothians) (Con)
 McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Radcliffe, Nora (Gordon) (LD)
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Scott, Tavish (Shetland) (LD)
 Simpson, Dr Richard (Ochil) (Lab)
 Smith, Iain (North-East Fife) (LD)
 Smith, Mrs Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Thomson, Elaine (Aberdeen North) (Lab)
 Tosh, Mr Murray (South of Scotland) (Con)
 Watson, Mike (Glasgow Cathcart) (Lab)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)
 Young, John (West of Scotland) (Con)

ABSTENTIONS

Sheridan, Tommy (Glasgow) (SSP)

The Deputy Presiding Officer: The result of the division is: For 30, Against 82, Abstentions 1.

Amendment 66 disagreed to.

Section 36—Procedure where articles in common ownership are sold at auction

Amendments 67 and 68 moved—[Dr Richard Simpson]—and agreed to.

Section 44—Interpretation of this Part and Parts 3 and 4

The Deputy Presiding Officer: Amendment 16 is grouped with amendments 17 to 20.

Dr Simpson: Amendments 16 to 20 are technical amendments to clarify the meaning of sections 44 and 46(2)(b). During stage 1, it became clear that a number of people who had read the bill had found section 46(2)(b) unclear. Earlier amendments at stage 2 had sought to rectify that but, on further scrutiny, it seems that those amendments could have unintended consequences.

The misunderstanding arose because it had been thought by some, mistakenly, that the provision meant that the attachment of articles kept in dwelling-houses could be undertaken on the authority of a summary warrant without the need to obtain an exceptional attachment order. That is not the intention and that is not what the bill does. Creditors in domestic cases will not be able to execute a summary warrant unless and until an exceptional attachment order is granted by the sheriff, as with any other creditor.

However, if a reading of the text is still giving rise to misinterpretation or ambiguity, we should adjust the text for the avoidance of any doubt or misinterpretation. Accordingly, the Executive has lodged amendments 16 to 20 to ensure that the matter is free from doubt.

I move amendment 16.

Amendment 16 agreed to.

Amendments 17 and 18 moved—[Dr Richard Simpson]—and agreed to.

Section 46—Exceptional attachment order

Amendments 19 and 20 moved—[Dr Richard Simpson]—and agreed to.

The Deputy Presiding Officer: Amendment 69 is in a group on its own.

Tommy Sheridan: In many respects, amendment 69 is the crux of the matter that faces the Parliament. We are told by the Executive that exceptional attachment orders will not be used against the poor. Amendment 69 would ensure that that principle became a reality.

First, the amendment seeks to ensure that, in considering a debtor's circumstances, a sheriff considers not just the debtor, but the debtor's household. Under exceptional attachment orders, the whole household suffers, not just the individual debtor; therefore, the debtor and anyone who is financially dependent on them should be considered together.

Secondly, and most important, there are already benefits that are means tested. The Department for Work and Pensions has already decided that the people who receive such benefits are poor. Why, then, should we not ensure that individuals who are in receipt of those benefits are not subject to exceptional attachment orders? If the purpose of the orders is only to have a go at the apparent fly-by-nights who have loads of money but just refuse to pay their debts, we should remove those who are officially defined as poor from the remit of the exceptional attachment orders. That would allow the protection necessary to ensure that those who are in receipt of benefits do not have to face sheriff officers coming to their home, breaking down their door and removing their goods.

Amendment 69 would provide an insurance policy against exceptional attachment orders being deployed against the poor.

For the cases of people on benefits who refuse to pay their debts, benefit arrestments are already available; whether those arrestments are moral is another discussion. However, if it can be proved that a debtor is in receipt of income support, a local authority will withdraw a case from a sheriff officer and apply forthwith for a benefit attachment for a prescribed amount of 5 per cent, which is the maximum that is allowed to be deducted from income support.

Therefore, to assure the chamber that we will not end up in a situation whereby those who are already clearly defined as poor will face exceptional attachment orders, I appeal to the minister to support amendment 69 in acknowledgement of the fact that it would provide an insurance policy that would remove, once and for all, people on benefits from the remit of exceptional attachment orders.

I move amendment 69.

Christine Grahame (South of Scotland) (SNP): I support amendment 69. In fact, the issue with which the amendment deals was first raised by my colleague Kenny Gibson at stage 1 and was supported at stage 2 by him and Linda Fabiani. As Mr Sheridan said, it is common for debtors to have their benefits reduced to pay debt. Wage arrestments also exist. Irrespective of whether one agrees with such measures, people who are on the edge of poverty can already have diligences taken against them.

I received a message from the Scottish working group of the debt on our doorstep campaign, which

"remains concerned that the Debt Arrangement and Attachment (Scotland) Bill does not, in its present form, achieve its policy objective, in that it fails to ensure that those who cannot pay their debts are excluded from exceptional attachment orders."

The group goes on to say:

"We also believe that a clear indication of Parliament's express wish to exclude the poorest from exceptional attachment orders would be the best response to claims that warrant sales are simply being renamed. We believe that Amendment 69 ... would do this effectively, by excluding people on means-tested benefits (which are used as a yardstick of poverty in many other areas, such as eligibility for school meals)."

I support Tommy Sheridan's amendment 69.

Mr McAllion: I, too, support amendment 69 and I agree that the key question about exceptional attachment orders is to whom they will apply. The policy memorandum assures us that a different regime will apply to the attachment and sale of the goods of debtors in domestic cases and that

exceptional attachment orders will be used only as a last resort and in very exceptional circumstances. The intention is to deal with the poor who find themselves in debt by directing them into debt arrangement schemes that will cover their outstanding debts and make impossible the use of exceptional attachment orders against them.

Earlier in the meeting, however, Parliament in effect voted to deny the freezing of interest rates and the composition of debts as part of debt arrangement schemes. In so doing, Parliament has potentially excluded thousands of poor people who are in debt from the protection of debt arrangement schemes. As a consequence, such people are exposed to exceptional attachment orders because they will be excluded from debt arrangement schemes. I want the minister to respond to that point in particular.

17:30

Often, the people about whom we are talking have multiple debts and are in the deepest trouble. They are the people who are least able to pay off their debts, which is why amendment 69 is essential. If we are serious about making exceptional attachment orders apply only to those who can pay but will not, there is no problem with excluding the category of people about whom we are talking from the scope of the exceptional attachment order. Someone who is on income support, income-based jobseekers allowance or the working families tax credit is among the poorest people in the land. We keep hearing that there is no intention that exceptional attachment orders will apply to those people, so what is the objection to including that in the bill? If the amendment is agreed to, we can guarantee that exceptional attachment orders will be used exceptionally; if the amendment is voted down by the Parliament, the only conclusion that can be drawn is that poindings and warrant sales are back under a different name.

Dennis Canavan (Falkirk West): I am opposed in principle to exceptional attachment orders, but I do not suppose that there is much chance of persuading the Executive to abandon them at the 11th hour. However, the least that we can do is to ensure that people on low incomes—the poorest of the poor—do not become the victims of exceptional attachment orders and the subsequent sale of their property.

The Scottish Parliament voted to abolish warrant sales and there was a widespread welcome for that throughout the country. Most people in Scotland, whether they had experienced warrant sales at first hand, witnessed them or heard of the barbaric practice, realised that, for the most part, the victims of warrant sales were people on low

incomes and their families. The least that we can do is to ensure that, today, we do not simply turn back the clock and make the poorest of the poor the victims of exceptional attachment orders.

Section 46(4)(g)(iii) says that, in considering whether to make an order, the sheriff shall have regard to "the debtor's financial circumstances". That obligation ought to be extended to ensure that the sheriff has regard to the financial circumstances of the debtor's family or household before coming to a decision, because there might be other people who are dependent on the debtor.

The sheriff should be obliged to deny an application for an attachment order in circumstances where, quite clearly, the income of the debtor is below a certain level. That is the purpose of the second part of amendment 69. People who are on income support, income-based jobseekers allowance, the disabled person's tax credit or the working families tax credit are, by definition, on low incomes. Income support is the amount that the Westminster Parliament has set down as the minimum level necessary for subsistence. Are we not to give that minimum protection to people? If the Scottish Parliament cannot do that, we are ignoring the voice and the needs of the poor.

As I said, I am opposed to exceptional attachment orders, but the least that we can do, if we are not to get rid of them from the bill completely, is to ensure that the poor do not become their victims.

Ms MacDonald: I can hardly add to what Dennis Canavan and John McAllion have said in support of amendment 69. Although those of us who oppose exceptional attachment orders have lost the battle against them—I accept that—we thought that we had won the fight against the inhumanity of warrant sales. As long as the Executive maintains an exceptional attachment order that will militate against the interests of the children of the poorest of the poor, the Parliament should not pass the bill.

Donald Gorrie: I support Tommy Sheridan's amendment 69. I have been remarkably modest in the number of my rebellions today, but I will certainly rebel on that amendment. As the paper from Graham Blount on behalf of the respectable people who are worried about the subject says, it is a litmus test of the Parliament. Surely we exist, amongst other things, to defend the weak against the strong. We must go the extra mile to help those who really need help. Amendment 69 does that.

One of the less attractive aspects of the Parliament, in which the Parliament is similar to many other organisations, is that a lot of people are against anything that Tommy Sheridan

proposes simply because he proposes it. Tommy Sheridan is open to criticism for his politics and conduct in certain respects—we all are—but we cannot deliver politics on the basis that we instinctively oppose something that a certain person says. We must consider the merits of the case. In this case, the merits are clearly on Tommy Sheridan's side.

As Graham Blount's paper says, many people feel that the bill is merely could kail rehet—it is warrant sales in another form. It is grossly hypocritical. We are wrong to go down that track. We should defend the debtors. I appeal to members to vote with their conscience, or for the Executive to see the light on the road to Damascus. If the Executive can see the light on sectarianism, it can see the light on debt.

Michael Russell (South of Scotland) (SNP): On such afternoons, when we are often mired in the arcana of drafting, we sometimes need to send a clear message to the people of Scotland. Many of our problems as a Parliament arise from the fact that we have been bad at sending clear messages. Amendment 69 sends the clearest possible message to Scotland: that, although many of us have huge reservations about the bill because it has not achieved what it should have achieved, something tangible and concrete is being offered to the poorest people in Scotland. That is a devastatingly simple message that the Parliament can send out. It would be a guarantee from the Executive and from each member that we had at least heard one plea and that we knew that the bill must be changed.

Surprisingly, I echo what Donald Gorrie said. Whatever our voting instructions say, amendment 69 is a matter of conscience. We must send out the message that at least one part of what the Parliament wanted to achieve in abolishing poindings and warrant sales—a part that, as Margo MacDonald said, causes misery for the poorest in Scotland and their families—has been done. I appeal to every member—no matter what the voting instructions in front of them say—to send that message.

Karen Whitefield: I will argue against Mr Sheridan's amendment 69. The reason is clear. I agree that we have a responsibility to send a message to the people of Scotland. That message must be correct and accurate. During stage 1, time and again, the witnesses who came to the Social Justice Committee were asked, "Is the bill as it stands poindings and warrant sales by another name?" Every witness was asked that and every witness said, "No it is not."

We send the wrong signal to the people of Scotland by telling them that the bill is something that it is not. It is not intended to introduce poindings and warrant sales by another name, and

it certainly does not do that. If someone is too poor to enter a debt arrangement scheme, they are too poor to have an exceptional attachment order made against them. That is a fundamental point that will prevent any poor person in Scotland from having an attachment made against them. *[Applause.]*

Christine Grahame: The Tories are applauding.

Karen Whitefield: This has absolutely nothing to do with the fact that the Conservatives support the bill; this is to do with what makes sense.

We have ensured that the bill will allow for pilot schemes, so that those who are excluded from entering the debt arrangement scheme will still be given an opportunity. If certain members think that their opinions are in keeping with those of the people of Scotland, but they want to set up a charter that would allow those people who have the money to pay their debts to refuse to do so, they are not in touch with the people in my constituency or anywhere else. It is wrong to suggest that people on benefit and who are undoubtedly poor do not want to pay their debts.

Robin Harper: Even if what Karen Whitefield says is correct, why not accept the amendment? It simply states what she says is in the bill, so why not include it in the bill? I urge members to consider that the bill before us would be the poorer without Tommy Sheridan's amendment 69.

Dr Simpson: I have listened carefully to the points made in the debate, and I understand the intention behind them. I take exception, however, to Donald Gorrie's remarks that some of us who propose to vote against amendment 69 have no conscience. I find that wholly objectionable. I suggest that Donald Gorrie thinks very carefully before rebelling, because he is suggesting that his party and the Labour party—and, in this case, the Conservative party too—are arguing that exceptional attachment orders are not intended to be exceptional. That is simply not the case. Everything that we have done in this bill has been intended to ensure that those who cannot pay should not be subject to exceptional attachment orders, and there is nothing to demonstrate that that they would be subject to them.

Mr Sheridan's amendment is a sweeping, blanket amendment, which would simply exclude 400,000 Scots from the potential to undertake credit. It tells those people that they are not creditworthy, because they will not be in a position to pay back their debt. We think that that is the wrong message to send out.

David McLetchie (Lothians) (Con): Can the minister confirm that, in certain circumstances, under the regulations that are applicable to the working families tax credit, and with the greater dependency culture that is being created by the

present Administration down south, households with an income in excess of £50,000 can qualify for the working families tax credit? Can he confirm that it would be an absurdity if amendment 69 were accepted and if households with that level of income were exempted from the rules?

Dr Simpson: I think that it is not the working families tax credit but the child tax credit to which David McLetchie refers. Nevertheless, there are upper limits in some benefit systems, which are now very high indeed. We therefore believe that a sweeping amendment such as amendment 69 is inappropriate. Indeed, we do not believe to be the case the assumption that people who have taken on debts and who are on income support do not wish to pay their debts, no matter what amount. That assumption is patronising.

Amendment 69 would create unfairness between those who are on benefits and those who are just above the qualifying level. It would not deal with those who qualify for benefits but who do not take up their entitlement. It could have the unintended knock-on effect of making lenders wary of extending credit to people who receive the benefit specified. I know that Tommy Sheridan does not agree, but his amendment would create a culture in which more than 400,000 Scots would, in effect, be telling creditors that they were not part of the system or of the scheme.

The last time that we discussed this proposal in committee, we discussed its potential anomalies and how it might be open to abuse. For example, a debtor would be exempted just because their 18-year-old child living at home received a jobseekers allowance or because they had a lodger who was on benefit, on whose rent they relied. Those anomalies might not be intended, but they would be consequences of amendment 69 being agreed to.

The better course is to retain the existing provisions in the bill. It is much better for individual circumstances to be assessed on a case-by-case basis so that particular circumstances are taken into account.

The exceptional attachment orders will be exceptional. There is not a single member of the Executive who would have signed up to the bill if they had believed otherwise. That is the intention in the bill. I urge members to reject amendment 69.

17:45

Tommy Sheridan: When giving evidence to the Social Justice Committee on 12 June—a meeting that Karen Whitefield attended—Pauline Allan from Money Advice Scotland stated that the debt arrangement scheme, which we have tried but failed to amend, would exclude 70 per cent of

Money Advice Scotland's clients. For Karen Whitefield to suggest that if someone is too poor for a debt arrangement scheme they will not be subject to an exceptional attachment order is utter nonsense.

Karen Whitefield: When we followed up the information to which Tommy Sheridan refers, Money Advice Scotland indicated that it was not correct. That is why I lodged my amendment proposing a pilot scheme. People whose incomes were too low would not automatically be included in a debt arrangement scheme.

Exceptional attachment orders are not about penalising the poor. They are about ensuring that those who can pay do pay. What will Tommy Sheridan do to ensure that those who can pay their debts do so? That is what ordinary working-class people want.

Tommy Sheridan: The Executive appears to have been willing to pursue Money Advice Scotland because it was off line when it gave its honest evidence. Money Advice Scotland's evidence to the committee, which was supported by evidence from the Scottish Association of Law Centres, Citizens Advice Scotland and other organisations that gave evidence to the committee, was clear about the fact that the poor will be excluded from debt arrangement schemes.

Karen Whitefield asked how I would ensure that people pay their debts. The first thing not to do is to stigmatise 400,000 people just because they are in receipt of benefit. When the minister admitted that 400,000 people in Scotland are in receipt of means-tested benefits, he should have apologised for that. Labour has been in Government for five years, but it has done nothing about it. The fact that 400,000 people are in receipt of benefit is a shocking statistic. The Executive is suggesting that the rhetoric of protecting the poor is only rhetoric. It is not willing to defend the poor and to exclude them from exceptional attachment orders.

Christine Grahame referred to the letter from Graham Blount. That letter appears to have been sent to all MSPs, so I can only assume that they all received it. As Grahame Blount is now sending letters of this sort, he had better watch out. I am sure that the Executive will want to pursue the points that he has made about exceptional attachment orders.

Graham Blount says that the bill as currently constructed is seriously flawed and will not defend the poor. He and his colleagues work with and represent the poor. They told us clearly that the bill would not defend the poor unless two amendments were supported. The first was amendment 45, in the name of Robert Brown, which dealt with the freezing of interest and

composition of debts. The Parliament rejected that amendment. The second is amendment 69, which would ensure that sheriff officers were not sent out to those who are already poor. Unfortunately, it seems that the Parliament will reject that amendment, too. That is why the bill should be rejected.

The Deputy Presiding Officer: The question is, that amendment 69 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Adam, Brian (North-East Scotland) (SNP)
Campbell, Colin (West of Scotland) (SNP)
Canavan, Dennis (Falkirk West)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Ewing, Dr Winnie (Highlands and Islands) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Gibson, Mr Kenneth (Glasgow) (SNP)
Gorrie, Donald (Central Scotland) (LD)
Grahame, Christine (South of Scotland) (SNP)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)
Harper, Robin (Lothians) (Grn)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Lochhead, Richard (North-East Scotland) (SNP)
MacAskill, Mr Kenny (Lothians) (SNP)
MacDonald, Ms Margo (Lothians) (SNP)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Matheson, Michael (Central Scotland) (SNP)
McAllion, Mr John (Dundee East) (Lab)
McGugan, Irene (North-East Scotland) (SNP)
McLeod, Fiona (West of Scotland) (SNP)
Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Neil, Alex (Central Scotland) (SNP)
Paterson, Mr Gil (Central Scotland) (SNP)
Quinan, Mr Lloyd (West of Scotland) (SNP)
Robison, Shona (North-East Scotland) (SNP)
Russell, Michael (South of Scotland) (SNP)
Sheridan, Tommy (Glasgow) (SSP)
Sturgeon, Nicola (Glasgow) (SNP)
Swinney, Mr John (North Tayside) (SNP)
Ullrich, Kay (West of Scotland) (SNP)
Welsh, Mr Andrew (Angus) (SNP)
White, Ms Sandra (Glasgow) (SNP)
Wilson, Andrew (Central Scotland) (SNP)

AGAINST

Aitken, Bill (Glasgow) (Con)
Alexander, Ms Wendy (Paisley North) (Lab)
Baillie, Jackie (Dumbarton) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Douglas-Hamilton, Lord James (Lothians) (Con)
Eadie, Helen (Dunfermline East) (Lab)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Fergusson, Alex (South of Scotland) (Con)

Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Gillon, Karen (Clydesdale) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (Edinburgh Pentlands) (Lab)
 Harding, Mr Keith (Mid Scotland and Fife) (Con)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, Mr John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Jackson, Dr Sylvia (Stirling) (Lab)
 Jackson, Gordon (Glasgow Govan) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
 Johnstone, Alex (North-East Scotland) (Con)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lyon, George (Argyll and Bute) (LD)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 MacKay, Angus (Edinburgh South) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McIntosh, Mrs Lyndsay (Central Scotland) (Con)
 McLeish, Henry (Central Fife) (Lab)
 McLetchie, David (Lothians) (Con)
 McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Murray, Dr Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Radcliffe, Nora (Gordon) (LD)
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Scott, Tavish (Shetland) (LD)
 Simpson, Dr Richard (Ochil) (Lab)
 Smith, Iain (North-East Fife) (LD)
 Smith, Mrs Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Thomson, Elaine (Aberdeen North) (Lab)
 Tosh, Mr Murray (South of Scotland) (Con)
 Wallace, Ben (North-East Scotland) (Con)
 Watson, Mike (Glasgow Cathcart) (Lab)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

The Deputy Presiding Officer: The result of the division is: For 36, Against 78, Abstentions 0.

Amendment 69 disagreed to.

The Deputy Presiding Officer: Amendment 70 is grouped with amendment 71. I remind members that, if amendment 70 is agreed to, amendment 71 will be pre-empted.

Tommy Sheridan: Amendment 70 is designed to add some extra protection—as we have been trying to do throughout the afternoon—to the exceptional attachment order procedure. As the bill stands, the sheriff may make an order for a visit to a debtor's home for the purposes of giving money advice. I propose adding a stipulation that, before an exceptional attachment order is granted, contact should be made with the debtor in their home. That should ensure that an exceptional attachment order is not granted in relation to someone in debt whose circumstances do not allow them to pay that debt. The amendment is relatively straightforward and I hope that the minister will agree to support it. However, given what has gone before, perhaps he will not.

I move amendment 70.

Mr Gibson: Amendment 71 follows on from my stage 2 amendment 130. Its purpose is to provide an element of choice for those who do not want unnecessary intrusion into their home, while acknowledging that contact between a debtor and a debt adviser is crucial. Mr Sheridan's amendment 70, which would make a visit by a debt adviser compulsory, is inappropriate. Many debtors might not want a debt adviser turning up at their home. If the sheriff believes that such contact is warranted and if the debtor wants advice, the debtor should be able to call on the debt adviser.

As well as choice, practical issues are involved. As yet, we do not know how many exceptional attachment orders there will be. Visiting each debtor could impose a heavy burden on advisers, particularly if great distances are involved and the adviser does not possess a motor vehicle. In parts of rural Scotland where public transport is occasional, that could make life difficult and might lead to fewer cases of debt being tackled. I am sure that, if MSPs had to visit every constituent who brought a case to them, the practicalities of the matter would become clear.

I pointed out to Dr Simpson at stage 2 that, as he will know, general practitioners can see an average of seven times as many cases in the surgery as they can see when they make house calls. That is why patients are encouraged to visit their GP, rather than the other way round. However, the minister is implying that visits should be more or less the norm for those who will provide advice to people who might have to endure an exceptional attachment order. Will resources allow for that? If a debtor wants to visit the adviser, why should they not do so?

Contact could be made through other means. I acknowledge that, for many, telephone contact or letters might be inappropriate, although they might be effective for some. Why should we be inflexible? It is important that the debtor is helped without the undue distress and indignity that enforced visitation might cause. I urge members to reject amendment 70 and to support amendment 71.

Dr Simpson: Amendments 70 and 71 have contradictory purposes. Amendment 70 would make a home visit from a money adviser compulsory in all cases before the sheriff has decided whether to grant an exceptional attachment order. That is unwise, because it would prevent the sheriff from exercising discretion on an assessment in individual circumstances.

As Kenny Gibson has acknowledged, amendment 71 is framed in the same terms as amendment 130, which he lodged at stage 2. At stage 2, the Executive acknowledged that amendment 130 had been lodged out of a desire to ensure that there was no unwarranted intrusion into a debtor's home. At that time, I explained that the existing provision meets the working group's recommendation that a visit by a money adviser might benefit a debtor who was too frightened to open their correspondence or who was incapable of doing so. It was thought that the adviser would be likely to achieve greater success by communicating in person. That recommendation is central to the aim of reaching out, through the genuine assistance of money advice, to the most vulnerable.

I understand that many money advisers welcome the provision, because they regard it as an opportunity to reach people who are in need of their services. Others have expressed reservations about how they would go about presenting themselves to the debtor. I have mentioned separately the arrangements and the investment that the Executive has made for central support for money advisers. The provision of training for money advisers by the central support organisation should help to address their concerns.

It should also be borne in mind that section 46(5)(b) allows the sheriff to make

"such other order as the sheriff thinks fit"

before deciding whether to make an exceptional attachment order. That means that, if the circumstances of a particular case suggest that a different course is appropriate, the sheriff will be able to deal with the case accordingly. Amendments 70 and 71 should be rejected.

The Deputy Presiding Officer: Do you intend to press amendment 70, Mr Sheridan?

Tommy Sheridan: I do.

The Deputy Presiding Officer: The question is, that amendment 70 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Canavan, Dennis (Falkirk West)
Sheridan, Tommy (Glasgow) (SSP)

AGAINST

Adam, Brian (North-East Scotland) (SNP)
Aitken, Bill (Glasgow) (Con)
Alexander, Ms Wendy (Paisley North) (Lab)
Baillie, Jackie (Dumbarton) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Campbell, Colin (West of Scotland) (SNP)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Douglas-Hamilton, Lord James (Lothians) (Con)
Eadie, Helen (Dunfermline East) (Lab)
Ewing, Dr Winnie (Highlands and Islands) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gallie, Phil (South of Scotland) (Con)
Gibson, Mr Kenneth (Glasgow) (SNP)
Gillon, Karen (Clydesdale) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Goldie, Miss Annabel (West of Scotland) (Con)
Gorrie, Donald (Central Scotland) (LD)
Grahame, Christine (South of Scotland) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (Edinburgh Pentlands) (Lab)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)
Harding, Mr Keith (Mid Scotland and Fife) (Con)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, Mr John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Jackson, Dr Sylvia (Stirling) (Lab)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
Johnstone, Alex (North-East Scotland) (Con)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lochhead, Richard (North-East Scotland) (SNP)
Lyon, George (Argyll and Bute) (LD)
MacAskill, Mr Kenny (Lothians) (SNP)
Macdonald, Lewis (Aberdeen Central) (Lab)
MacDonald, Ms Margo (Lothians) (SNP)
Macintosh, Mr Kenneth (Eastwood) (Lab)
MacKay, Angus (Edinburgh South) (Lab)
Maclean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)

Martin, Paul (Glasgow Springburn) (Lab)
 Marwick, Tricia (Mid Scotland and Fife) (SNP)
 Matheson, Michael (Central Scotland) (SNP)
 McAllion, Mr John (Dundee East) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McGugan, Irene (North-East Scotland) (SNP)
 McIntosh, Mrs Lyndsay (Central Scotland) (Con)
 McLeish, Henry (Central Fife) (Lab)
 McLeod, Fiona (West of Scotland) (SNP)
 McLetchie, David (Lothians) (Con)
 McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)
 Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Neil, Alex (Central Scotland) (SNP)
 Oldfather, Irene (Cunninghame South) (Lab)
 Paterson, Mr Gil (Central Scotland) (SNP)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Quinan, Mr Lloyd (West of Scotland) (SNP)
 Radcliffe, Nora (Gordon) (LD)
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)
 Robison, Shona (North-East Scotland) (SNP)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
 Russell, Michael (South of Scotland) (SNP)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Scott, Tavish (Shetland) (LD)
 Simpson, Dr Richard (Ochil) (Lab)
 Smith, Iain (North-East Fife) (LD)
 Smith, Mrs Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Sturgeon, Nicola (Glasgow) (SNP)
 Swinney, Mr John (North Tayside) (SNP)
 Thomson, Elaine (Aberdeen North) (Lab)
 Tosh, Mr Murray (South of Scotland) (Con)
 Wallace, Ben (North-East Scotland) (Con)
 Wallace, Mr Jim (Orkney) (LD)
 Watson, Mike (Glasgow Cathcart) (Lab)
 Welsh, Mr Andrew (Angus) (SNP)
 White, Ms Sandra (Glasgow) (SNP)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)
 Wilson, Andrew (Central Scotland) (SNP)
 Young, John (West of Scotland) (Con)

The Deputy Presiding Officer: The result of the division is: For 2, Against 111, Abstentions 0.

Amendment 70 disagreed to.

Amendment 71 moved—[Mr Kenneth Gibson].

The Deputy Presiding Officer: The question is, that amendment 71 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Adam, Brian (North-East Scotland) (SNP)
 Aitken, Bill (Glasgow) (Con)
 Campbell, Colin (West of Scotland) (SNP)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Ewing, Dr Winnie (Highlands and Islands) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Ewing, Mrs Margaret (Moray) (SNP)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Gibson, Mr Kenneth (Glasgow) (SNP)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Harding, Mr Keith (Mid Scotland and Fife) (Con)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Mr Adam (South of Scotland) (SNP)
 Johnstone, Alex (North-East Scotland) (Con)
 Lochhead, Richard (North-East Scotland) (SNP)
 MacAskill, Mr Kenny (Lothians) (SNP)
 MacDonald, Ms Margo (Lothians) (SNP)
 Marwick, Tricia (Mid Scotland and Fife) (SNP)
 Matheson, Michael (Central Scotland) (SNP)
 McGugan, Irene (North-East Scotland) (SNP)
 McLeod, Fiona (West of Scotland) (SNP)
 McLetchie, David (Lothians) (Con)
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)
 Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
 Neil, Alex (Central Scotland) (SNP)
 Paterson, Mr Gil (Central Scotland) (SNP)
 Robison, Shona (North-East Scotland) (SNP)
 Russell, Michael (South of Scotland) (SNP)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Swinney, Mr John (North Tayside) (SNP)
 Tosh, Mr Murray (South of Scotland) (Con)
 Wallace, Ben (North-East Scotland) (Con)
 Welsh, Mr Andrew (Angus) (SNP)
 White, Ms Sandra (Glasgow) (SNP)
 Wilson, Andrew (Central Scotland) (SNP)
 Young, John (West of Scotland) (Con)

AGAINST

Alexander, Ms Wendy (Paisley North) (Lab)
 Baillie, Jackie (Dumbarton) (Lab)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Canavan, Dennis (Falkirk West)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
 Gillon, Karen (Clydesdale) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)
 Gorrie, Donald (Central Scotland) (LD)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (Edinburgh Pentlands) (Lab)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, Mr John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Jackson, Dr Sylvia (Stirling) (Lab)
 Jackson, Gordon (Glasgow Govan) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)

Lyon, George (Argyll and Bute) (LD)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 MacKay, Angus (Edinburgh South) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McAllion, Mr John (Dundee East) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McLeish, Henry (Central Fife) (Lab)
 McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Murray, Dr Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Radcliffe, Nora (Gordon) (LD)
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)
 Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
 Scott, Tavish (Shetland) (LD)
 Sheridan, Tommy (Glasgow) (SSP)
 Simpson, Dr Richard (Ochil) (Lab)
 Smith, Iain (North-East Fife) (LD)
 Smith, Mrs Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Thomson, Elaine (Aberdeen North) (Lab)
 Wallace, Mr Jim (Orkney) (LD)
 Watson, Mike (Glasgow Cathcart) (Lab)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

The Deputy Presiding Officer: The result of the division is: For 39, Against 66, Abstentions 0.

Amendment 71 disagreed to.

Section 47—Exceptional circumstances

18:00

The Deputy Presiding Officer: Amendment 72 is grouped with amendments 74 and 75.

Cathie Craigie: Members will be aware that section 47 was amended at stage 2, when the £50 threshold was increased to £100 and the 10 per cent threshold was retained. In agreeing to that amendment at stage 2, the committee gave further consideration to the content of section 47 and thought that it would be appropriate that the section be simplified for the sake of clarity. Amendments 72, 74 and 75 would provide that clarity by simply setting the minimum at £100 without requiring any percentage threshold. I ask Parliament to accept all three amendments.

I move amendment 72.

Dr Simpson: Section 47(1)(c) was amended at stage 2 in line with the committee's concern about the monetary threshold. Section 47 specifies matters about which the sheriff must be satisfied

when deciding whether to grant an exceptional attachment order. Those include a requirement that there should be a reasonable prospect that the sum recovered from the auction of a debtor's assets should equal a reasonable estimate of the chargeable expenses and whichever is the lesser of 10 per cent of the debt due—including the interest thereon—and £100. Amendments 72, 74 and 75 would change section 74 again to provide for only the minimum threshold of £100 with no percentage calculation.

Committee members have given the provisions a great deal of consideration. The working group felt that attachment should follow only if a significant proportion of the debt would be realised by it. However, I agree that we should avoid different treatment of creditors. Leaving out the percentage would certainly mean that the provisions would be simpler to apply. On balance, therefore, the Executive supports amendments 72, 74 and 75.

Amendment 72 agreed to.

Amendments 74 and 75 moved—[Cathie Craigie]—and agreed to.

Section 48—Power of entry

The Deputy Presiding Officer: Amendment 76 stands in a group on its own.

Tommy Sheridan: When the Parliament was considering the Abolition of Poindings and Warrant Sales Bill, some of the most persuasive evidence that was presented came from adults who, as children, had experienced warrant sales in their home. They had experienced the indignity of strangers coming into their home and going through the various rooms, including the bedrooms. They had watched mothers and fathers in tears because they could do nothing to prevent those strangers from removing goods from their home.

The evidence that the Social Inclusion, Housing and Voluntary Sector Committee received at that time was persuasive. A number of individuals made the point that, having heard that evidence, they changed their mind on whether they would support the Abolition of Poindings and Warrant Sales Bill.

Amendment 76 seeks to prevent any other kid from experiencing the indignity of strangers coming into their home to remove their goods. Unfortunately, the Labour-Liberal-Tory coalition has already decided that sheriff officers can go into the houses of the poor and break down their doors to conduct what is a warrant sale by any other name. For goodness' sake, at least exempt the kids from experiencing that sort of indignity. By supporting amendment 76, members might be able to salvage something.

I move amendment 76.

Dr Simpson: Amendment 76 would have the effect of making it impossible for an exceptional attachment order to be executed if a child under 16 years of age was present in the house. Section 48 provides the protection that the order cannot be executed if there is no adult present. It is different to say that there must be no child present. Notice must be given in what it is intended would be the few difficult cases, so that the debtor may make arrangements to ensure that children are not present, if that is a problem. Of course, if amendment 76 were passed, the debtor might arrange to have a child in his house in order to defeat the execution of the order. That would lay the provision open to abuse. Accordingly, amendment 76 should be rejected.

The Deputy Presiding Officer: Mr Sheridan, do you intend to press amendment 76?

Tommy Sheridan: Yes.

The Deputy Presiding Officer: The question is, that amendment 76 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Canavan, Dennis (Falkirk West)
MacDonald, Ms Margo (Lothians) (SNP)
McAllion, Mr John (Dundee East) (Lab)
Sheridan, Tommy (Glasgow) (SSP)

AGAINST

Adam, Brian (North-East Scotland) (SNP)
Aitken, Bill (Glasgow) (Con)
Alexander, Ms Wendy (Paisley North) (Lab)
Baillie, Jackie (Dumbarton) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Campbell, Colin (West of Scotland) (SNP)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
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Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Douglas-Hamilton, Lord James (Lothians) (Con)
Eadie, Helen (Dunfermline East) (Lab)
Ewing, Dr Winnie (Highlands and Islands) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gallie, Phil (South of Scotland) (Con)
Gibson, Mr Kenneth (Glasgow) (SNP)
Gillon, Karen (Clydesdale) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Goldie, Miss Annabel (West of Scotland) (Con)
Gorrie, Donald (Central Scotland) (LD)
Grahame, Christine (South of Scotland) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (Edinburgh Pentlands) (Lab)

Hamilton, Mr Duncan (Highlands and Islands) (SNP)
Harding, Mr Keith (Mid Scotland and Fife) (Con)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, Mr John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Jackson, Dr Sylvia (Stirling) (Lab)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
Johnstone, Alex (North-East Scotland) (Con)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lochhead, Richard (North-East Scotland) (SNP)
Lyon, George (Argyll and Bute) (LD)
MacAskill, Mr Kenny (Lothians) (SNP)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
MacKay, Angus (Edinburgh South) (Lab)
Maclean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Matheson, Michael (Central Scotland) (SNP)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McGugan, Irene (North-East Scotland) (SNP)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
McLeish, Henry (Central Fife) (Lab)
McLeod, Fiona (West of Scotland) (SNP)
McLetchie, David (Lothians) (Con)
McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Monteith, Mr Brian (Mid Scotland and Fife) (Con)
Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Neil, Alex (Central Scotland) (SNP)
Oldfather, Irene (Cunninghame South) (Lab)
Paterson, Mr Gil (Central Scotland) (SNP)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Quinan, Mr Lloyd (West of Scotland) (SNP)
Radcliffe, Nora (Gordon) (LD)
Raffan, Mr Keith (Mid Scotland and Fife) (LD)
Robison, Shona (North-East Scotland) (SNP)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
Russell, Michael (South of Scotland) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland) (LD)
Simpson, Dr Richard (Ochil) (Lab)
Smith, Iain (North-East Fife) (LD)
Smith, Mrs Margaret (Edinburgh West) (LD)
Stephen, Nicol (Aberdeen South) (LD)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
Sturgeon, Nicola (Glasgow) (SNP)
Swinney, Mr John (North Tayside) (SNP)
Tosh, Mr Murray (South of Scotland) (Con)

Ullrich, Kay (West of Scotland) (SNP)
 Wallace, Ben (North-East Scotland) (Con)
 Wallace, Mr Jim (Orkney) (LD)
 Watson, Mike (Glasgow Cathcart) (Lab)
 Welsh, Mr Andrew (Angus) (SNP)
 White, Ms Sandra (Glasgow) (SNP)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)
 Wilson, Andrew (Central Scotland) (SNP)
 Young, John (West of Scotland) (Con)

The Deputy Presiding Officer: The result of the division is: For 4, Against 109, Abstentions 0.

Amendment 76 disagreed to.

Section 49—Unlawful acts before attachment

The Deputy Presiding Officer: Amendment 7 is in a group on its own.

Dr Simpson: On 9 October, the committee agreed at stage 2 to amendment 115, in the name of Kenny Gibson. That amendment clarified that creditors and officers would be liable under section 16 in relation to damage or destruction of attached articles. Amendment 125, agreed on 30 October, achieved the same change for section 49(2). Amendment 7 will produce the same effect for section 47(1)(a) and is needed to ensure consistent treatment throughout the bill. It completes the tidying-up exercise.

I move amendment 7.

Amendment 7 agreed to.

After section 49

Amendment 77 moved—[Dr Richard Simpson]—and agreed to.

Section 50—Articles with sentimental value

Amendment 78 moved—[Dr Richard Simpson]—and agreed to.

Section 51—Removal of articles attached in dwellinghouse

Amendments 79 to 81 moved—[Dr Richard Simpson]—and agreed to.

After section 51

Amendment 82 moved—[Dr Richard Simpson]—and agreed to.

Section 53—Redemption

Amendment 83 moved—[Dr Richard Simpson]—and agreed to.

Section 55—Appeals

The Deputy Presiding Officer: Amendment 8 is in a group on its own.

Dr Simpson: Stage 2 amendment 139, in the name of Kenny Gibson, was agreed by the

committee on 30 October. It provided that the sheriff principal, rather than the Court of Session, would determine appeals against the decision of a sheriff in granting an exceptional attachment order. It was intended to provide the debtor with easier and cheaper access to a right of appeal, on the basis that appeals to the Court of Session are likely to be more expensive, to take longer to be heard and perhaps to be more intimidating.

The Executive supported that earlier amendment and, in recognition of the fact that the bill does not follow the common-law provision regarding appeals, amendment 8 is required to clarify the position. In keeping with the reasons for the earlier amendment, amendment 8 confirms that the appeal avenue will stop with the sheriff principal.

I move amendment 8.

Amendment 8 agreed to.

Section 57—Savings

The Deputy Presiding Officer: Amendment 9 is grouped with amendments 10 and 11.

Dr Simpson: Amendments 9, 10 and 11 are technical amendments. Stage 2 amendment 126, which was agreed to on 30 October, substituted existing references to “attachments” or “attachment” as appropriate in paragraphs 24(1) and 24(3) of schedule 7 to the Bankruptcy (Scotland) Act 1985.

Amendment 11 is a consequential savings provision, which is necessary as a result of the Social Justice Committee’s agreement to amendment 126. Amendments 9 and 10 are technical amendments, which are necessary in connection with the bill’s existing savings provision. Amendment 10 simply inserts a word that is required as a consequence of amendment 9.

I move amendment 9.

Amendment 9 agreed to.

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

Section 60—Regulations and orders

The Deputy Presiding Officer: Amendment 91 is grouped with amendment 92.

Dr Simpson: Amendments 91 and 92 respond to the requests of the Social Justice Committee and the Subordinate Legislation Committee. They recognise the overriding concern that Parliament should be given the opportunity to scrutinise the detail of the regulations.

At stage 2, the Executive made a commitment to bring forward an amendment to allow the first set

of regulations to be made under section 7 of the bill to be subject to the affirmative resolution procedure. Amendments 91 and 92 achieve that. Amendments 91 and 92 will give the Parliament a full opportunity to consider and debate the detail of the debt arrangement scheme with the benefit of the consultation responses.

I move amendment 91.

Amendment 91 agreed to.

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

Schedule 1

EXPENSES OF ATTACHMENT ETC

The Deputy Presiding Officer: Amendment 84 is grouped with amendment 86.

Dr Simpson: Amendments 84 and 86 amend the list of expenses that are chargeable against the debtor. The Social Justice Committee raised some practical questions about that at stage 2. Amendments 84 and 86 arise from those discussions and provide clarification about expenses that are chargeable.

Schedule 1 to the bill sets out the expenses of attachment that can be recovered from the debtor. It includes provision for expenses to be chargeable in connection with both the execution of an attachment and the execution of an exceptional attachment order. However, one reading of paragraph 1(b) could suggest that the expenses of executing an exceptional attachment order at a dwelling-house may not be recovered. That was not the intention. Amendment 84 clarifies that position.

Amendment 86 likewise provides clarity in respect of any costs of storing assets that are attached under an exceptional attachment order. It is fair and right that a creditor should be able to recover expenses that are necessarily incurred by their enforcing a debt. Given the exceptional nature of the exceptional attachment order, the upshot will be that, in what are intended to be the few cases where people can pay their debts but are trying to avoid doing so, expenses will be chargeable.

I move amendment 84.

Mr Gibson: I oppose amendment 86. It seeks to place yet another burden on debtors. It adds insult to injury that they will be expected to pay the storage costs of attached goods. I notice that amendment 86 does not specify the maximum period during which the extra burden will apply to such goods.

Dr Simpson: There is a time frame between the removal of objects and the auction that must then be held, so Kenny Gibson is wrong, because there is a time frame with regard to storage.

Amendment 84 agreed to.

Amendment 85 moved—[Dr Richard Simpson]—and agreed to.

Amendment 86 moved—[Dr Richard Simpson].

The Deputy Presiding Officer: The question is, that amendment 86 be agreed to. Are we agreed?

Members: No.

18:15

The Deputy Presiding Officer: There will be a division.

FOR

Aitken, Bill (Glasgow) (Con)
 Alexander, Ms Wendy (Paisley North) (Lab)
 Baillie, Jackie (Dumbarton) (Lab)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Gillon, Karen (Clydesdale) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Gorrie, Donald (Central Scotland) (LD)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (Edinburgh Pentlands) (Lab)
 Harding, Mr Keith (Mid Scotland and Fife) (Con)
 Harper, Robin (Lothians) (Grn)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, Mr John (East Lothian) (Lab)
 Jackson, Dr Sylvia (Stirling) (Lab)
 Jackson, Gordon (Glasgow Govan) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
 Johnstone, Alex (North-East Scotland) (Con)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lyon, George (Argyll and Bute) (LD)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 MacKay, Angus (Edinburgh South) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McAllion, Mr John (Dundee East) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McIntosh, Mrs Lyndsay (Central Scotland) (Con)
 McLeish, Henry (Central Fife) (Lab)
 McLetchie, David (Lothians) (Con)
 McMahan, Mr Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)

Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Radcliffe, Nora (Gordon) (LD)
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Scott, Tavish (Shetland) (LD)
 Simpson, Dr Richard (Ochil) (Lab)
 Smith, Iain (North-East Fife) (LD)
 Smith, Mrs Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Tosh, Mr Murray (South of Scotland) (Con)
 Wallace, Ben (North-East Scotland) (Con)
 Wallace, Mr Jim (Orkney) (LD)
 Watson, Mike (Glasgow Cathcart) (Lab)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

AGAINST

Adam, Brian (North-East Scotland) (SNP)
 Campbell, Colin (West of Scotland) (SNP)
 Canavan, Dennis (Falkirk West)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Ewing, Dr Winnie (Highlands and Islands) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Ewing, Mrs Margaret (Moray) (SNP)
 Gibson, Mr Kenneth (Glasgow) (SNP)
 Grahame, Christine (South of Scotland) (SNP)
 Hamilton, Mr Duncan (Highlands and Islands) (SNP)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Mr Adam (South of Scotland) (SNP)
 Lochhead, Richard (North-East Scotland) (SNP)
 MacAskill, Mr Kenny (Lothians) (SNP)
 MacDonald, Ms Margo (Lothians) (SNP)
 Marwick, Tricia (Mid Scotland and Fife) (SNP)
 Matheson, Michael (Central Scotland) (SNP)
 McGugan, Irene (North-East Scotland) (SNP)
 McLeod, Fiona (West of Scotland) (SNP)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
 Neil, Alex (Central Scotland) (SNP)
 Paterson, Mr Gil (Central Scotland) (SNP)
 Quinan, Mr Lloyd (West of Scotland) (SNP)
 Robison, Shona (North-East Scotland) (SNP)
 Russell, Michael (South of Scotland) (SNP)
 Sheridan, Tommy (Glasgow) (SSP)
 Sturgeon, Nicola (Glasgow) (SNP)
 Swinney, Mr John (North Tayside) (SNP)
 Ullrich, Kay (West of Scotland) (SNP)
 Welsh, Mr Andrew (Angus) (SNP)
 White, Ms Sandra (Glasgow) (SNP)
 Wilson, Andrew (Central Scotland) (SNP)
 Young, John (West of Scotland) (Con)

The Deputy Presiding Officer: The result of the division is: For 79, Against 34, Abstentions 0.

Amendment 86 agreed to.

Amendment 87 moved—[Dr Richard Simpson]—and agreed to.

Schedule 2

NON-ESSENTIAL ASSETS

The Deputy Presiding Officer: Amendment 88 is in a group on its own.

Mr Gibson: We know that amendment 88 cannot stand alone and for that reason we will not press it. Amendment 88 makes the point that the Executive has failed to ensure a division between commercial and domestic debt recovery procedures. In the absence of that division in legislation, the opportunities exist for creditors to pursue domestic debt through simple attachment orders, rather than exceptional attachment orders. In those circumstances, none of the schedule 2 measures to protect debtors during exceptional attachments will apply. It would be in order for a domestic debt to be pursued through a simple attachment order and for officers of the court to arrive at a debtor's house to remove any property that was not in the house.

As one cannot apply a simple attachment order to anything inside a house, it is strange that, although articles that would normally be attached in pursuit of a commercial debt need only be kept inside a house to be safe, the bicycle that a debtor uses to go to work on and keeps in the garage can be auctioned to take care of a domestic debt.

I move amendment 88.

Dr Simpson: Amendment 88 would import to ordinary attachment the schedule 2 exemptions that apply to exceptional attachment orders. Section 11 provides for exemptions from attachment, but those provisions are varied to reflect the fact that attachments will not take place in premises that are not a home, which are primarily commercial premises or garages and lock-ups. The schedule 2 exemptions do not make sense in that context.

Amendment 88 is flawed. It would not meet its aim, because schedule 2 defines the term "non-essential assets". That term is not used in section 11, so the two provisions are not linked.

Mobile homes were not mentioned, so I will not deal with the issues that they raise.

Amendment 88 should be withdrawn. I am grateful to Kenny Gibson for agreeing to do so.

Amendment 88, by agreement, withdrawn.

Schedule 3

MINOR AND CONSEQUENTIAL AMENDMENTS AND REPEALS

The Deputy Presiding Officer: Amendment 12 is grouped with amendment 13.

Dr Simpson: Amendments 12 and 13 are technical. The Civil Legal Aid (Scotland) Regulations 1996 will be superseded by the Civil

Legal Aid (Scotland) Regulations 2002, which were made on 6 November and will come into force on 1 December. The amendments simply update the references in the bill.

I move amendment 12.

Amendment 12 agreed to.

Amendment 13 moved—[Dr Richard Simpson]—and agreed to.

The Deputy Presiding Officer: That ends our consideration of amendments.

Debt Arrangement and Attachment (Scotland) Bill

The Deputy Presiding Officer (Mr George Reid): The next item of business is a debate on motion S1M-3534, in the name of Jim Wallace, which seeks agreement that the Debt Arrangement and Attachment (Scotland) Bill be passed, and one amendment to that motion. Will those members who want to contribute to the debate please press their request-to-speak buttons now?

18:20

The Deputy First Minister and Minister for Justice (Mr Jim Wallace): It is evident that a considerable amount of time and hard work has been spent on the bill. That is proper. The way in which any society deals with debt is a matter of fundamental importance and the bill is crucial to a great many people in Scotland. How we tackle the problem will have a real impact on our goals of promoting social inclusion and protecting people's rights in a balanced way.

In developing the bill, people with widely differing interests and perspectives have pulled together to achieve a consensus approach and create a new framework for dealing with debt. They have put debt management before debt enforcement and delivered the alternative to poinding and warrant sales for which the Parliament called. They have worked to deliver an approach that empowers individuals to deal with their own debt problems with both practical support and dignity. It is an approach that will also get more debt paid in a managed way and avoid the time and cost of enforcement.

I want to express gratitude to everyone who has taken part in the search for this new way forward. It would be invidious, and time would not permit, to name everyone. However, it is important to mention all who served on the working group that produced the report "Striking the Balance: a new approach to debt management", which was chaired ably by Angus MacKay. I thank the Social Justice Committee not only for its evidence and preparation of the stage 1 report, but for its detailed consideration at stage 2, and I thank its members and the officials who serve it. I thank the officials in my department, the bill team and, not least, my deputy Dr Richard Simpson, who has devoted a considerable amount of time, energy and thought into dealing with the bill.

The working group's report, "Striking the Balance: a new approach to debt management", proposed just that. It was supported by the vast majority of people across Scotland who took the

time and trouble to respond to the consultation, and the bill was based on that report. As I have said, the Social Justice Committee's intense reflection, consultation and debate on all the issues and problems that have been raised has been time and effort well spent. The bill is better as a result. There has of course been compromise, but I believe that the outcome is all the better for that, because it has taken all interests into account as it tries to strike the fair balance.

There was agreement about the need for less costly ways, in terms of both personal distress and money, of achieving repayment of debt without the need for formal enforcement. The bill creates the foundations for a national debt arrangement scheme. We now have the results from the consultation exercise, which were published last week, and we will introduce the necessary regulations, taking account of those results, as soon as we can. If we could have, we would have done things in a different order but, regrettably, that was not possible. However, as a result of an amendment passed this afternoon, we intend that Parliament should be able to scrutinise the regulations by affirmative resolution procedure.

There was also general agreement about the need for appropriate enforcement for people who have the means but who are unwilling to pay their debts—the “can pay, won't pay” brigade. That is not just for creditors' benefit, but for decent, ordinary people who pay their bills and are fed up with subsidising chancers who think that they can get away with not paying. In line with the Parliament's clear wish, the bill treats domestic and commercial situations differently. The entirely new court procedure for judicial scrutiny of individual circumstances is designed to ensure that an exceptional attachment order will be available only in genuinely exceptional circumstances. Numerous steps are in place so that it will be granted only for the few difficult “can but won't pay” cases—the ones who are well able to meet their liabilities and should not be able to leave it to everyone else to cough up.

The Executive's commitment to finding better ways of tackling debt is clear. It is demonstrated not only in the bill but in our investment in front-line money advice. That is the backbone of our new approach. The Executive's additional £3 million funding per year will deliver at least 100 additional money advisers across the country, accessible locally to all for free. People are already benefiting from that investment in money advice, and our separate investment of an extra £500,000 per year in training and quality assurance will ensure that that advice is provided to a consistently high standard.

As for Linda Fabiani's proposed amendment to the motion, the Executive firmly believes for the reasons I have outlined that the bill meets the remit set by the Parliament. However, we have already made it clear that we intend to monitor the new system carefully and to review how it works in practice once it has bedded down. The working group recommended that we should do so once the scheme had been up and running for three years, and we intend to follow that sensible proposal.

It has been a long haul. However, although we have come a long way in the past two years, it does not finish here. The bill is part of a bigger picture, of which the debt arrangement scheme is another, very large part. Members will be aware that we also intend to reform the wider enforcement system. We want to promote further reform to ensure that, across the board, we have an effective, efficient, workable and humane enforcement system in Scotland. The bill proceeds on that basis and is a huge leap towards achieving that goal.

I resent and reject the assertion that perhaps only one person in the chamber has a monopoly of conscience on the matter. The contribution that many people in all parties have made to the bill shows how much we want to take and are taking action to help people who genuinely cannot pay and to ensure that they do not face enforcement. The bill will ensure that they are directed towards money advice that will help them to get out of their predicament. We are also investing substantial extra money in that advice. As a result, arguing that the bill will not protect the most vulnerable is as misleading as it is unfair.

I move,

That the Parliament agrees that the Debt Arrangement and Attachment (Scotland) Bill be passed.

18:26

Mr Kenneth Gibson (Glasgow) (SNP): It has been a long day and I will be mercifully brief, not least because a number of colleagues wish to speak in the limited time that is available. First, I place on record my thanks to the convener of the Social Justice Committee for her even-handedness and good humour throughout stage 2 of the bill.

I thank the clerking staff of the Social Justice Committee for hard work above and beyond the call of duty and all those who submitted written and oral evidence. I must also thank my colleague Linda Fabiani, whose contribution has been restricted due to family bereavement and ill health. Last, and probably least, I thank Robert Brown for keeping me supplied with paracetamol throughout the day.

The purpose of the Debt Arrangement and Attachment (Scotland) Bill was to put in place measures to protect the debtor. Indeed, the bill has been welcomed by almost all organisations that have given written or oral evidence including Citizens Advice Scotland, the Institute of Credit Management, the Convention of Scottish Local Authorities, the Scottish Consumer Council, the Scottish Sheriff Court Users Group, the Scottish Legal Action Group and the Society of Messengers-at-Arms and Sheriff Officers.

In particular, the Scottish Sheriff Court Users Group welcomed the plan to set up a national debt arrangement scheme that

“could provide the cornerstone for an effective system of debt collection in the 21st century”.

However, concerns were expressed in the committee about the bill’s ability to separate those who cannot pay from those who will not pay. One such case is the exceptional attachment order, which was criticised throughout by the Scottish Legal Action Group as being “not exceptional enough”. Indeed, as the Society of Messengers-at-Arms and Sheriff Officers and others have pointed out, exceptional attachment orders will eliminate some current so-called diligence stoppers.

Unfortunately, the Executive would not support measures to that end at either stage 2 or stage 3. For example, I lodged amendments 134 and 135 at stage 2 to attempt to ensure that attachment and arrangement became a two-stage process. Indeed, Mr Sheridan lodged amendment 69 at stage 3 to ensure that people on benefit would be excluded.

Although the SNP remains unhappy about that aspect of the bill and indeed about some aspects of the debt arrangement scheme, we feel that it is important to consider the bill in the round. The debt arrangement scheme will make a difference to thousands of Scots who are currently in debt. By balancing the thousands of people whose lives will be improved against those who the Executive has repeatedly asserted will amount to a few, we have concluded that we do not wish to throw the baby out with the bath water. Instead the SNP seeks to amend the bill to ensure that, within a year of royal assent, the Scottish Executive will have carried out research that proves conclusively just how exceptional—or not—exceptional attachment orders are.

A few minutes ago, the minister said that he would monitor the system carefully. We do not believe that that is enough. As a result, I move amendment S1M-3534.1, to insert at end:

“but, in so doing, expresses reservations that the Bill does not fully fulfil the will of the Parliament as expressed on 6 December 2000 during the passage of the Abolition of Poinings and Warrant Sales Bill, and calls upon the Scottish Executive to institute ongoing research into the

effects of the provisions of the Bill and report the results of this research to the Parliament at its first meeting after the first anniversary of the Bill receiving Royal Assent.”

18:29

Mrs Lyndsay McIntosh (Central Scotland)

(Con): I will probably be even more brief than my colleague Kenny Gibson. I congratulate everyone on lasting the pace; it has been a long day. I also thank those who gave written or oral evidence and, of course, our wonderful clerking team. I should say now that we will support the Executive.

I would like to hark back to something that was said during the stage 1 debate on the bill. Trish Godman spoke about how easy it is to get into debt. She talked about people finding themselves with debts that mount until they are put into the invidious position of being called to account. I said at the time that I would collect samples of the credit offers that were made to me. I have them with me today: £25,000-worth of credit from CapitalOne; £15,000 from Lloyds TSB; and limitless credit on the Providian Visa Platinum card and on Morgan Stanley’s Platinum card.

I do not know why on earth the RAC would want to offer me credit, but it does—£25,000. Marks and Sparks also offered me £25,000, as did MBNA. Even the National Farmers Union of Scotland offered me money. I say to the minister and colleagues across the chamber that it is little wonder that people right, left and centre can get into difficulties when offers of credit are made as readily as that.

I support the Executive’s attempts to try to address the situations that were outlined by Mr Sheridan. Jim Wallace rightly said that Mr Sheridan does not have a monopoly on the issue—we felt for the people who had suffered in those situations and we tried to do something about it. The bill is the best that the Executive has come up with. I am grateful that we will have opportunities in future, when we consider the regulations that will be laid before the Parliament, to examine the issue again.

18:31

Robert Brown (Glasgow) (LD): I join colleagues in thanking the Social Justice Committee clerks and others for their support during the passage of the bill. Apart from anything else that can be said about the bill, the process has been a good one. The minister listened to a number of the concerns and, as we have seen today, a number of issues have come back at stage 3 in the form of appropriate amendments.

Today is a good day for the Scottish Parliament. If the bill is passed, it will represent a well-balanced bill, one that I described during the stage 1 debate as

"the most comprehensive and liberal system of debt collection in western Europe."—[*Official Report*, 19 September 2002; c 13904.]

In many ways, the bill is a great experiment. It is based on the belief of the Parliament and the Executive that most people want to pay their debts. It is a belief that people should be helped to put their affairs in order and that those who are able to pay their debts but do not do so require to be forced by legal process to do just that.

The debate has been lengthy. I am bound to say that, at one or two points, it was marked by a degree of bad temper and exaggerated comment. Jim Wallace and Lyndsay McIntosh touched on that. I hope that we will not see that happen again in future debates on the subject.

The subject is one in which all members in the chamber feel that they have an interest and on which they can contribute. It is fair that the chamber should pay tribute to Tommy Sheridan and his colleagues for introducing the Abolition of Poindings and Warrant Sales Bill, which was a landmark bill in the Parliament. However, as Jim Wallace rightly said, that does not give the movers of that bill a monopoly on morality or anything else of that sort.

We have ended up with a bill that is workable and which sets a proper balance. The bill reflects the way in which people outside the chamber view things. On the whole, people do not expect to enter into arrangements and not pay their debts. They do not expect to be let off with things or to have exceptional arrangements made for them. Nevertheless, we are all aware that people enter into arrangements which, because of changes in circumstances or for other reasons, prove to be beyond their ability to repay. Lyndsay McIntosh rightly drew attention to the credit side of the issue and the way in which debt is so readily obtainable in our society without, it would appear, a responsible attitude being taken by many of the lending institutions.

The bill has been a long time in the making. It has dominated the activities of the Parliament from an early stage. The passage of the bill has happened in a most effective fashion. We now have a bill that, if it is passed, will last—although time will tell. Clearly, in the light of experience and as time goes by, amendments will need to be made, but I think that it will work. The proof of the pudding will be in the debt arrangement scheme, which stands at the centre of the bill.

The debt arrangement scheme is what makes the bill and, hopefully, debt arrangements in Scotland different from the arrangements that are in place in other countries. I think that the bill will work and that it will act as an example to other countries. I would like to believe that it will make a major contribution to the social history of this country. I support the bill.

The Deputy Presiding Officer: Quite a number of members have asked to speak in the debate. It has been a lengthy day. I ask them to keep to overviews and not to fight too many past battles.

18:35

Karen Whitefield (Airdrie and Shotts) (Lab): I take it that you refer to me, Presiding Officer.

I thank the committee clerks, who worked tirelessly during the passage of the bill. Stage 2 of any bill is fraught with difficulties, so it is to the clerks' credit that the process was relatively smooth and calm. I thank other staff, including catering and security staff, whose quiet efforts in the background helped to make the task of scrutinising the bill that little bit easier. I also thank all those who gave evidence to the committee. There were far too many to mention—although Kenny Gibson made a good attempt—but they all made a worthwhile contribution and gave us much-needed clear information about the impact of various sections of the bill. Finally, I thank the minister and his team for their stewardship of the bill through its stages.

Members from throughout the chamber welcome both the ending of poindings and warrant sales and the opportunity to provide a replacement for outdated legislation. I congratulate Mr Sheridan on his contribution to making that possible. However, he was not alone and many members supported his campaign.

We must end the continual attempts to suggest that the bill merely reintroduces poindings and warrant sales by another name. That is not the case. The bill will enable creditors to pursue debt in cases where people can afford to pay but choose not to. I believe that the people of Scotland will agree with the Executive on that matter. In my speech in the stage 1 debate, I said that ordinary people in Scotland understand that individuals should take responsibility for their debts. If Mr Sheridan and others think that that is not the case, they are sadly out of touch with the people of Scotland.

Despite what has been said today, the bill as amended delivers significant improvements on the original bill. I am pleased that, during stage 2, the Executive accepted the need to draw a clearer distinction between those who provide money advice and those who administer the debt arrangement scheme. That change is important, as is the introduction of a pilot scheme to ensure that those who are at the edges have access to money advice, if that is appropriate.

Mr Sheridan stated today on the radio that he would shame members who chose to support the bill. He has passed up an opportunity to engage meaningfully and constructively in the

development of the bill and instead has constructed a string of disingenuous arguments to claim that the bill will result in the poorest in our society being served with exceptional attachment orders. That is simply not true; the bill will protect Scotland's poorest people and, I believe, it will succeed in its aim to deliver a more humane form of diligence which, at its heart, takes into account the debtor's ability to pay.

18:38

Christine Grahame (South of Scotland) (SNP): Part 1 of the bill is highly commendable because the debt arrangement scheme is necessary. It is unfortunate that Scotland has no jurisdiction over consumer credit, although I suspect that Lyndsay McIntosh received the offers that she mentioned as a result of her postcode.

Mrs McIntosh rose—

Christine Grahame: I have only three minutes.

Mrs McIntosh: On a point of information. One of the letters was addressed to me at the Scottish Parliament and was from the NFUS.

Christine Grahame: I hope that I will gain some extra time for that, Presiding Officer.

The Deputy Presiding Officer: Seven seconds.

Christine Grahame: Part 2 of the bill deals with exceptional attachments and sales, which are really just poindings and warrant sales by another name. We had a lesson on legislation from Karen Whitefield. I want to quote from two pieces of legislation and ask her whether I mislead Parliament when I say that poindings and warrant sales still live. The first piece of legislation lists as articles exempt from poinding

"implements, tools of trade, books or other equipment reasonably required for the use of the debtor or any member of his household in the practice of the debtor's or such member's profession, trade or business".

The second lists

"any implements, tools of trade, books or other equipment reasonably required for the use of the debtor in the practice of the debtor's profession, trade or business".

The first piece of legislation is the Debtors (Scotland) Act 1987 and the second is the Debt Arrangement and Attachment (Scotland) Bill.

Karen Whitefield: Will the member give way?

Christine Grahame: No. Karen Whitefield is having a lesson.

The 1987 act permits

"the opening of shut lockfast places, if necessary for the purpose of executing the poinding",

while under the power of entry and valuation, the bill allows that

"An officer may open shut and lockfast places for the purposes of executing an attachment."

That is a cut-and-paste approach to legislation, putting sections straight from the Debtors (Scotland) Act 1987 into the Debt Arrangement and Attachment (Scotland) Bill. I have no problem with making the procedure more humane, but the bill does not abolish poindings and warrant sales. It cannot do that when whole sections of it are imported straight from the Debtors (Scotland) Act 1987. The truth cannot be avoided, no matter how Executive members twist and turn in the wind. Poindings and warrant sales remain; they are simply renamed.

I lodged an amendment to make the bill honest. The long title says that the bill abolishes poindings and warrant sales. Amendment 89 sought to put it honestly in seeking to insert:

"rename the diligence of poindings and warrant sales as 'attachment' to provide for the auction of attached articles".

Section 10 states:

"There shall be a form of diligence over corporeal moveable property for recovery of money owed; it is to be known as attachment."

It used to be known as a poinding. Whatever the bill does, it does not abolish poindings and warrant sales; it renames them. There are good things in the bill, but its long title is misleading.

Although the Presiding Officer told me that my amendment 89 was technically defective, I do not accept that and I shall pursue the matter. It is essential that the Parliament does not mislead the Scottish public. The long title says that the bill abolishes poindings and warrant sales, but it does not.

18:41

Johann Lamont (Glasgow Pollok) (Lab): I have been called to speak as the convener of the Social Justice Committee. I am therefore conscious that, as I rise to commend the bill and support its passing by the Parliament, certain constraints are placed on me against my engaging with some of the wilder fringes of the debate thus far.

On behalf of all members and the Social Justice Committee, I record our thanks to Jim Johnston and his clerking team for the difficult job that they did. They worked with great efficiency, courtesy and good humour at all stages, no matter what pressures were brought to bear on them. I also thank the staff of the Scottish Parliament information centre for the support and back-up that they offered to members. I thank the staff of the official report, who managed to follow the debate and make sense of it for the broader public. In particular, I thank all those who gave evidence—

both written and oral—and I thank the minister for his willingness to engage in dialogue with the committee. I believe that all those people made an important contribution in allowing the committee to give thoughtful consideration to the bill at stage 1 and stage 2.

In addition, I thank the Social Justice Committee's members. Regardless of what has been said today, all the committee members approached the job at stage 1 and stage 2 in a serious way. They took seriously their role to undertake independent scrutiny of the bill and when we agreed or disagreed, we did so based on what was said to us, rather than on who said it. The true independence of the committee was in its listening rather than in members' expressing their support for any individual who took a position on the bill.

The bill is important, and we are at the end of a long and considered process that began long before publication of the bill, which sought to introduce a humane and workable alternative to poindings and warrant sales. I believe that the bill offers significant help to those who have been lured into unaffordable debt. It is important that a degree of consensus—which I believe exists throughout the Parliament—was apparent in the committee's desire that real money advice be provided as early as possible in order to prevent people from getting into multiple debt and to help them to sort out the problem if they have got into that position.

During the course of the debate, I re-read some of my speeches. The main charge against the old system was that it allowed those who could not pay to be humiliated, thereby putting pressure on those who could pay. However, we must recognise equally that we cannot allow those who can pay to hide behind the difficulties of those who cannot pay. Throughout its stages, the bill has sought to make that distinction; I believe that it has achieved that and that it separates those who cannot pay from those who can.

There is a broader issue of irresponsible lending and an issue about encouraging sensible borrowing. There must be an important confidence-building process of encouraging people to seek help at an early stage by using, for example, money advice groups and credit unions. We must consider the issue of affordable credit to prevent people from getting involved in the extremes of money lending. We might be brought back to those broader issues in another place.

However, I believe that the bill's substance addresses the distinction between those who can and those who cannot pay, and that it maintains the important provision that those who cannot pay will not be used as they were previously, which was to persuade those who could pay to pay.

There are anxieties about regulation and I welcome the ministerial commitment to involve Parliament through the use of orders that will be subject to affirmative procedure. I believe that that important commitment and concession by ministers will allow the monitoring protection for which people have asked. The debt arrangement system will be monitored to ensure that it does what we intend it to do and in effect will express Parliament's will to abolish warrant sales and poindings and support the bill's provisions. Therefore, I will welcome the passing of the bill. The challenge thereafter will be to ensure that the bill's provisions and regulations work effectively for people in our communities.

18:46

Tommy Sheridan (Glasgow) (SSP): Karen Whitefield made a point at the Social Justice Committee meeting of 12 June 2002 when speaking to David Ancliffe. She said:

"There has been considerable media interest in the bill; indeed, it has been suggested that its measures are nothing more than poindings and warrant sales by another name. I am interested to find out whether you agree with that suggestion."

Pauline Allan, representing Money Advice Scotland, said a little later in the meeting:

"If the exceptional attachment order is retained, we also have concerns about the fact that the proposed process for poinding some goods is one stage shorter than the previous process. As a result, it is worse than the old poindings and warrant sales."

Karen Whitefield responded:

"So you are suggesting that, if the provision remains in the bill, we will need amendments to ensure that the measure is not so draconian and that we protect those who genuinely do not have the ability to pay."—[*Official Report, Social Justice Committee*, 12 June 2002; c 3012 and 3013.]

Pauline Allan said yes to that.

Karen Whitefield rose—

Tommy Sheridan: I am sorry, but Karen Whitefield had her time. I have only three minutes.

Graham Blount, who works for Church Action on Poverty and is the Scottish co-ordinator of the debt on our doorstep campaign, says in an e-mail:

"Debt arrangement schemes have the potential to be of great benefit, but powers to freeze interest and to order composition of debts are essential to an effective debt arrangement scheme."

He goes on to say:

"We also believe that a clear indication of Parliament's expressed wish to exclude the poorest from exceptional attachment orders would be the best response to claims that warrant sales are simply being renamed."

Therefore, when Karen Whitefield says that members are somehow trying to warp reality by

suggesting that exceptional attachment orders are poindings and warrant sales by another name, she has many more targets at which to aim. The people who work on the ground and who provide the debt advice at the coalface—including Citizens Advice Scotland, which is utterly opposed to exceptional attachment orders—say that the Executive has fatally undermined the good intentions behind the bill. That is why the SNP amendment deserves support. If the SNP amendment is not supported, the bill deserves to be voted against. It is rich to hear Jim Wallace and Lyndsay McIntosh tell us about their concern for the poor in relation to exceptional attachment orders. Where were they when it came to voting on the abolition of poindings and warrant sales? They could not support the proposal then, but suddenly they are greatly concerned about the poor.

The truth is that the Executive is reintroducing a form of warrant sale and that it is allowing sheriff officers forcibly to enter debtors' homes and remove their goods. That is fact, not fiction; it is warrant sales by another name. That is why Karen Whitefield should be ashamed of supporting exceptional attachment orders. She should be even more ashamed after being unwilling to defend those who are in receipt of benefits against being subject to exceptional attachment orders. She had the chance to do so, but she is prepared to subject the poorest people in Scotland to exceptional attachment orders. She should be ashamed of herself, as should the other Labour members who voted for exceptional attachment orders.

18:49

Donald Gorrie (Central Scotland) (LD): I accept entirely that the ministers and all members care about the poor and are trying to do their best. The question is whether what is in the bill will achieve what we want for the poor. As Johann Lamont correctly said, one of the problems is helping the poor who are trying to pay their debts while not letting off the chancers who can pay and do not. Some parts of the bill are still unsatisfactory from the point of view of people who find it difficult to pay but who are doing their best. However, Robert Brown tells me that the bill is a great step forward and I have great confidence in him.

Although I disagreed with much of what she said, I congratulate Karen Whitefield on fighting her corner with great gusto, which was good.

In the end, I will give the ministers the benefit of the doubt. However, if it goes wrong and it turns out that they have not delivered what they promised they would, they will be criticised for that. They promise us that the bill will work.

Johann Lamont: Does Donald Gorrie accept that the committee got an important commitment from the minister to the effect that the regulations will be subject to affirmative procedure? That means that the bill, as enacted, will be monitored and that the time to address concerns will be when they develop. The bill, rather than being what some people have represented it as being, offers a huge challenge to the Executive.

Donald Gorrie: That is a fair point. That commitment is one of the factors that will sway me to vote for the bill because it offers a chance for the operation of the act to be examined better.

I am sure that the ministers' hearts are in the right place, but I am not sure that the advice that they receive is always of the best. Some of the people who are in the front line in relation to debt perhaps see the issue more clearly than some of the people who advise ministers.

I look forward to good scrutiny of the bill by Johann Lamont's committee and others and I hope that the bill does some good. As others have said, the debt arrangement side is good; however, some of us have doubts about the business of exceptional attachment orders.

18:51

Mr John McAllion (Dundee East) (Lab): I will confine my remarks to exceptional attachment orders and the reasons for my continuing opposition to them.

Those who support exceptional attachment orders argue that they are different from the old system of poindings and warrant sales. Although I accept that there are differences, the question is whether the differences are great enough to satisfy Parliament that we will not be letting poindings and warrant sales return in a different guise.

Section 46 of the bill authorises the attachment, removal and auction of a debtor's assets from his or her house. That is exactly the same as a poinding and warrant sale. Section 47 gives sheriff's officers the right to force entry into debtors' households. That is exactly what happened with poindings and warrant sales. The system of exceptional attachment orders comes nowhere near being different enough from the poindings and warrant sales system to convince me that it is worth supporting.

Those who support exceptional attachment orders argue that they are different from poindings and warrant sales because they will apply only to those who can afford to pay their debts, but who will not do so because they are lazy wasters. This afternoon we debated whether, by rejecting amendments 45 and 69, the Parliament has

exposed thousands more poor people to exceptional attachment orders—that is the key to the debate. It was argued by some that if someone is too poor to be on the debt arrangement scheme, they will be too poor to have an exceptional attachment order applied to them. However, I did not hear a scrap of evidence that supported that argument and it is certainly not the view of Citizens Advice Scotland or the debt on our doorstep campaign, who take a contrary view and are much closer to the poor than any of us in this Parliament. I am more inclined to listen to their advice.

Among all the matters that the bill says a sheriff must take into account before granting an exceptional attachment order, the only initiative that is capable of resolving the outstanding debt is a debt arrangement scheme. If we are to exclude thousands of people from such schemes, we can offer them all the advice and information that we can and sympathise as much as possible, but if their debts remain unresolved, their creditors will be entitled by the bill to apply for exceptional attachment orders, which sheriffs will have no option but to grant. That is my reading of the bill.

I accept that everybody here is trying to do what they think is the right thing in accordance with their consciences, but I do not accept the argument that divides those who are in debt into workers who are hard-working and who pay their debts, and unemployed wasters who want to avoid paying their debts. For years, the Tories have divided the poor into the deserving poor and the undeserving poor, but I will never accept that argument and I resent anyone in the Scottish Parliament using it in the 21st century.

The Deputy Presiding Officer: We move to closing speeches. I would like to be finished by 2 minutes to 7.

18:55

Mr Gibson: That gives us a lot of time, Presiding Officer.

In the past 40 minutes, we have had some heat, some light and some interesting comments. For example, Robert Brown described the bill as a “comprehensive and liberal system”, which makes me wonder what his definition of “liberal” is. We have even heard Lyndsay McIntosh make a strong case for the Consumer Credit Act 1974 to be devolved to Scotland.

However, if we look at the bill, we see that the Executive has been pretty fly in the way in which it has presented the bill to Parliament. It has, in effect, cobbled together two bills: one to set up a debt arrangement scheme, which would undoubtedly have the Parliament’s overwhelming support; and a bill to reinstate some aspects of

pointings and warrant sales, which has generated much opposition throughout the chamber.

If what I have said is not the case, I hope that the minister will be able to support our amendment, agreement to which would mean that we could bring the bill back in a year, check out the workings of the exceptional attachment order and find out whether it is pointings and warrant sales by a new name or, as the Executive has said, the turning of the page to a new chapter in dealing with debt in Scotland.

18:56

The Deputy Minister for Justice (Dr Richard Simpson): I begin by thanking the Social Justice Committee for its work on the bill. I worked with the committee on stage 2, which was a pleasure. We considered the issues in great detail and we have done a good job in drawing together some of the committee’s concerns. What is perhaps most important is that the regulations—which must flesh out some of the important aspects of the process—will be subject to affirmative procedure and Parliament will have the opportunity to debate them.

There is no disagreement in Parliament on the bill’s intention, which is to have a humane system that ensures that those who can pay are made to pay and that those who cannot pay are protected from a system that was not good, not effective, was inappropriate and made people suffer inappropriately. That is what we are achieving; it is certainly the bill’s intention. I hope that everyone accepts at least that intention as valid.

Debt is increasing and we know that it is a problem—an increasing problem—for many people. There must be realistic ways of paying such debts and different solutions are required for this century. We believe that what we will do today in introducing both the debt arrangement scheme and free nationwide practical help for everyone who wants it will—together with our wider measures of, for example, supporting credit unions—produce significant change in the way we approach debt, in the way we support those who are unable to pay and in the way we protect them from fruitless enforcement. That fruitless enforcement was the most unpleasant aspect of the previous scheme. Although I acknowledge what Christine Grahame, Tommy Sheridan and others said about the fact that they do not believe that the scheme is different—

The Deputy Presiding Officer: Dr Simpson, it will be helpful if you could continue until 19:00. You have another minute and 40 seconds.

Dr Simpson: Of course, the bill incorporates some of the language of previous acts, because it needs to tackle some of the same problems.

However, as a whole—the bill should be taken as a whole—it will be different from the old system. The Social Justice Committee concluded that that was the case and, despite the comments and quotations that Tommy Sheridan has given us, so did Money Advice Scotland, the Scottish Consumer Council and many others.

If only Christine Grahame, Tommy Sheridan and others would open their minds, consider the bill in the round and consider the way in which it will be interpreted, they would see that we have a humane and workable system—an alternative in which the whole Parliament believes. We have heard the points that were made in the debate and we have taken on board the points that were made at stage 1.

As I have another 50 seconds left, I conclude by thanking the bill team for two reasons. To produce a bill is difficult in any case. However, because we passed the Abolition of Poindings and Warrant Sales Act 2001 before we got into the process of the bill, we have had some difficulties and the process has been compressed. That led to some of the difficulties in the subordinate legislation to which the Subordinate Legislation Committee referred. That is not the right way round for the Parliament to deal with legislation. In this case, it led to difficulties about the consultation process being able adequately to inform members for stage 2. That is one reason why the regulations will be particularly important. I support the bill.

The Deputy Presiding Officer: I am grateful to you for keeping to time, Dr Simpson.

Decision Time

19:00

The Deputy Presiding Officer (Mr George Reid): There are two questions to be put as a result of today's business.

The first question is, that amendment S1M-3534.1, in the name of Linda Fabiani, which seeks to amend motion S1M-3534, on the Debt Arrangement and Attachment (Scotland) Bill, be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Adam, Brian (North-East Scotland) (SNP)
 Campbell, Colin (West of Scotland) (SNP)
 Canavan, Dennis (Falkirk West)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Ewing, Dr Winnie (Highlands and Islands) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Ewing, Mrs Margaret (Moray) (SNP)
 Gibson, Mr Kenneth (Glasgow) (SNP)
 Grahame, Christine (South of Scotland) (SNP)
 Hamilton, Mr Duncan (Highlands and Islands) (SNP)
 Harper, Robin (Lothians) (Grn)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Mr Adam (South of Scotland) (SNP)
 Lochhead, Richard (North-East Scotland) (SNP)
 MacAskill, Mr Kenny (Lothians) (SNP)
 Marwick, Tricia (Mid Scotland and Fife) (SNP)
 Matheson, Michael (Central Scotland) (SNP)
 McGugan, Irene (North-East Scotland) (SNP)
 McLeod, Fiona (West of Scotland) (SNP)
 Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
 Neil, Alex (Central Scotland) (SNP)
 Paterson, Mr Gil (Central Scotland) (SNP)
 Robison, Shona (North-East Scotland) (SNP)
 Russell, Michael (South of Scotland) (SNP)
 Sheridan, Tommy (Glasgow) (SSP)
 Sturgeon, Nicola (Glasgow) (SNP)
 Swinney, Mr John (North Tayside) (SNP)
 Ullrich, Kay (West of Scotland) (SNP)
 Welsh, Mr Andrew (Angus) (SNP)
 White, Ms Sandra (Glasgow) (SNP)
 Wilson, Andrew (Central Scotland) (SNP)

AGAINST

Aitken, Bill (Glasgow) (Con)
 Alexander, Ms Wendy (Paisley North) (Lab)
 Baillie, Jackie (Dumbarton) (Lab)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Fergusson, Alex (South of Scotland) (Con)
 Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)

Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Gillon, Karen (Clydesdale) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Gorrie, Donald (Central Scotland) (LD)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (Edinburgh Pentlands) (Lab)
 Harding, Mr Keith (Mid Scotland and Fife) (Con)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, Mr John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Jackson, Dr Sylvia (Stirling) (Lab)
 Jackson, Gordon (Glasgow Govan) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
 Johnstone, Alex (North-East Scotland) (Con)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lyon, George (Argyll and Bute) (LD)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 MacKay, Angus (Edinburgh South) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
 McIntosh, Mrs Lyndsay (Central Scotland) (Con)
 McLeish, Henry (Central Fife) (Lab)
 McLetchie, David (Lothians) (Con)
 McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Radcliffe, Nora (Gordon) (LD)
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Scott, Tavish (Shetland) (LD)
 Simpson, Dr Richard (Ochil) (Lab)
 Smith, Iain (North-East Fife) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Thomson, Elaine (Aberdeen North) (Lab)
 Tosh, Mr Murray (South of Scotland) (Con)
 Wallace, Ben (North-East Scotland) (Con)
 Wallace, Mr Jim (Orkney) (LD)
 Watson, Mike (Glasgow Cathcart) (Lab)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)
 Young, John (West of Scotland) (Con)

ABSTENTIONS

McAllion, Mr John (Dundee East) (Lab)

The Deputy Presiding Officer: The result of the division is: For 31, Against 82, Abstentions 1.

Amendment disagreed to.

The Deputy Presiding Officer: The second and final question is, that motion S1M-3534, in the name of Jim Wallace, that the Debt Arrangement and Attachment (Scotland) Bill be passed, be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Aitken, Bill (Glasgow) (Con)
 Alexander, Ms Wendy (Paisley North) (Lab)
 Baillie, Jackie (Dumbarton) (Lab)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Fergusson, Alex (South of Scotland) (Con)
 Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Gillon, Karen (Clydesdale) (Lab)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Gorrie, Donald (Central Scotland) (LD)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (Edinburgh Pentlands) (Lab)
 Harding, Mr Keith (Mid Scotland and Fife) (Con)
 Harper, Robin (Lothians) (Grn)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, Mr John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Jackson, Dr Sylvia (Stirling) (Lab)
 Jackson, Gordon (Glasgow Govan) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
 Johnstone, Alex (North-East Scotland) (Con)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lyon, George (Argyll and Bute) (LD)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 MacKay, Angus (Edinburgh South) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
 McIntosh, Mrs Lyndsay (Central Scotland) (Con)
 McLeish, Henry (Central Fife) (Lab)
 McLetchie, David (Lothians) (Con)
 McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)

McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West)
 (LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Radcliffe, Nora (Gordon) (LD)
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mr Mike (West Aberdeenshire and Kincardine)
 (LD)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Scott, Tavish (Shetland) (LD)
 Simpson, Dr Richard (Ochil) (Lab)
 Smith, Iain (North-East Fife) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross)
 (LD)
 Thomson, Elaine (Aberdeen North) (Lab)
 Tosh, Mr Murray (South of Scotland) (Con)
 Wallace, Ben (North-East Scotland) (Con)
 Wallace, Mr Jim (Orkney) (LD)
 Watson, Mike (Glasgow Cathcart) (Lab)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)
 Young, John (West of Scotland) (Con)

AGAINST

Canavan, Dennis (Falkirk West)
 Godman, Trish (West Renfrewshire) (Lab)
 McAllion, Mr John (Dundee East) (Lab)
 Sheridan, Tommy (Glasgow) (SSP)

ABSTENTIONS

Adam, Brian (North-East Scotland) (SNP)
 Campbell, Colin (West of Scotland) (SNP)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Ewing, Dr Winnie (Highlands and Islands) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Ewing, Mrs Margaret (Moray) (SNP)
 Gibson, Mr Kenneth (Glasgow) (SNP)
 Grahame, Christine (South of Scotland) (SNP)
 Hamilton, Mr Duncan (Highlands and Islands) (SNP)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Mr Adam (South of Scotland) (SNP)
 Lochhead, Richard (North-East Scotland) (SNP)
 MacAskill, Mr Kenny (Lothians) (SNP)
 Marwick, Tricia (Mid Scotland and Fife) (SNP)
 Matheson, Michael (Central Scotland) (SNP)
 McGugan, Irene (North-East Scotland) (SNP)
 McLeod, Fiona (West of Scotland) (SNP)
 Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
 Neil, Alex (Central Scotland) (SNP)
 Paterson, Mr Gil (Central Scotland) (SNP)
 Robison, Shona (North-East Scotland) (SNP)
 Russell, Michael (South of Scotland) (SNP)
 Sturgeon, Nicola (Glasgow) (SNP)
 Swinney, Mr John (North Tayside) (SNP)
 Ullrich, Kay (West of Scotland) (SNP)
 Welsh, Mr Andrew (Angus) (SNP)
 White, Ms Sandra (Glasgow) (SNP)
 Wilson, Andrew (Central Scotland) (SNP)

The Deputy Presiding Officer: The result of the division is: For 82, Against 4, Abstentions 28.

Motion agreed to.

That the Parliament agrees that the Debt Arrangement and Attachment (Scotland) Bill be passed.

Motion without Notice

19:01

The Minister for Parliamentary Business (Patricia Ferguson): Presiding Officer, I would like to move a motion without notice.

I move,

That, under Rule 2.2.6(d), the meeting of the Parliament continue until 7.30 pm.

Tommy Sheridan (Glasgow) (SSP): Can the Minister for Parliamentary Business clarify how long the Minister for Justice will speak for, before we decide whether to approve the 30-minute extension? I hope that time will be provided for questions—that is what I am concerned about.

The Deputy Presiding Officer (Mr George Reid): I have looked at Mr Wallace's statement and I estimate that it will last about 11 minutes, or perhaps less.

Motion agreed to.

Fire Brigades Union (Dispute)

The Deputy Presiding Officer (Mr George Reid): The next item of business is a statement by Jim Wallace on the fire brigade dispute. The minister will take questions at the end of his statement. There should therefore be no interventions.

19:03

The Deputy First Minister and Minister for Justice (Mr Jim Wallace): The first national fire strike in 25 years is now under way. I very much regret that, not least because the action that is being taken by the Fire Brigades Union—the FBU—is, I believe, entirely avoidable. Let there be no doubt that a strike by firefighters will put public safety at risk.

In the face of the threat of industrial action by the FBU if its 40 per cent claim was not met, the Executive had to take prudent action to protect the public. Consequently, we have invoked plans that we have in place to deal with this sort of emergency.

There has been comprehensive contingency planning with the Ministry of Defence. That involves the use of the armed services' personnel and equipment. It is supported by the police, ambulance and fire services. That has been taking place at national, regional and local levels. The Scottish Executive justice department, under the auspices of the Scottish emergencies co-ordination committee—the SECC—has held regular meetings with the military, with the fire, police and ambulance services and with local authorities to review and monitor the contingency plans. We are prepared.

I attended last night's SECC meeting, at which I was reassured that our plans are in place. During the next 48 hours of strikes, the Scottish Executive emergencies room will be open, staffed by Executive officials. Representatives from the police, the military and Her Majesty's Fire Service Inspectorate will be present. Through this facility, we will have a direct link to the joint command and control centre in Stirling. Tomorrow I will meet my ministerial colleagues in the Executive to review the situation. I will also again meet the civil contingencies committee, to keep abreast of developments across the United Kingdom.

Although we have never claimed that the contingency arrangements can replicate fully the cover provided by the regular fire service, Ministry of Defence personnel have been preparing and training for their role during the strike. They are providing emergency cover and their priority will be to save life. In Scotland, we have about 1,800

military personnel who are operating out of 48 temporary fire stations across the country. There are about 110 green goddesses, 36 breathing apparatus rescue teams and eight regional equipment support teams. Those teams will include personnel who are trained and experienced in the use of breathing apparatus and other specialist equipment. All military personnel will have undertaken training tailored to their skills and roles. During previous disputes, military personnel have proved that they are able to provide emergency cover. We are very grateful to all those from the three armed forces, who we know will respond professionally.

The public can help the situation by taking extra care and being especially vigilant. Sadly, some 80 per cent of fire deaths occur in the home. For that reason, we are running a public safety information campaign in all the main newspapers and through local radio. The campaign reiterates the message that, in the event of fire, people should get out, stay out and dial 999. The 999 system will continue to operate, with calls being diverted on a temporary basis to alternative operations centres.

The public can do everything they can to prevent a fire by ensuring that they have a working smoke alarm; by thinking about their fire escape plan now; by taking special care when cooking, especially with chip pans and hot oil; by taking care with all smoking materials and candles; and by watching out for the vulnerable in our communities.

I turn now to why we are faced with the need to activate our contingency plans. No one doubts the dedication and bravery of our firefighters. All our emergency services are properly held in high regard for their professionalism and dedication. For 25 years, firefighters' pay has been determined by a formula that links the pay of a fully qualified firefighter to the earnings of the top 25 per cent of adult male manual workers. The formula has served the fire service well and has provided a 20 per cent increase in firefighters' pay since 1997. As recently as July 2000, Mr Andy Gilchrist, the general secretary of the Fire Brigades Union, was quoted in the union's "FireFighter" magazine as saying:

"Our wages remain ahead of other essential public sector workers precisely because we have maintained the formula."

Firefighters have been well protected by the formula and the service continues to attract and retain staff without difficulty.

However, the FBU has sought a 39 per cent pay rise in the annual salary of a qualified firefighter. Its claim also includes a 50 per cent pay increase for control room staff and a pro rata increase in the hourly rate for retained or part-time firefighters. Such a claim would cost local authority employers

in Scotland about £45 million per annum. It has been made even though only yesterday the Office for National Statistics announced a headline inflation figure of 2.1 per cent.

I want to say something about the negotiating process. First, the Scottish Executive has no direct locus in fire service pay and conditions of service issues. Those are matters for local authority employers and they are negotiated on a United Kingdom basis through the National Joint Council for Local Authority Fire Brigades—the NJC. The NJC met throughout the summer.

On 2 September, the employers offered the Fire Brigades Union a 4 per cent pay rise and, for the future, a new pay formula that would link fire service pay to average settlements in the economy. However, in view of the FBU's stance on its 40 per cent claim, the employers extended to the union an offer to join them in seeking from the Government an independent review of the fire service that would consider both modernisation and pay. That offer was rejected.

When it was clear that negotiations had effectively broken down, the Government announced an independent review of the fire service. There is a long tradition of the Government's using independent reviews to resolve difficult industrial relations issues, usually after a long and bitter dispute. Here was an opportunity to use an independent review to prevent one. The review that Professor Sir George Bain is conducting provides an excellent opportunity to consider a range of issues that the fire service faces, including pay.

Yes the review is about modernisation, but that does not necessarily mean an attack on firefighters' terms and conditions. Rather it is a recognition that investment has to be matched with reform. For example, it means ensuring that the service is equipped to deal with the consequences of any mass terrorist attack; it means that fire cover needs to reflect risk; and it means working towards a fire service that reflects the diversity of the community it serves. There is no reason why that cannot go hand in hand with a fair deal for firefighters. However, in return we need to change some of the out-of-date working practices.

The review provides the means of avoiding unnecessary and deeply damaging industrial action. All parties have been given an opportunity to submit evidence and to participate in the review. Indeed Sir George Bain has made it clear that he wants to sit down and listen to both sides—both the fire service and its employers. I hope that the FBU will reconsider its position.

Many people will not be able to understand why strike action could not have been suspended until

the full outcome of the review was known, considered and discussed in detail by the NJC. More important, they will be wondering why, when the FBU is so confident of its case, it has steadfastly refused to participate in the review.

The Bain review has already produced a position paper as the basis for starting off the negotiating process. The position paper already covers a lot of ground, but in relation to pay it states that there is no sound economic basis for a pay claim above 4 per cent; that firefighters' pay compares well with that of similar jobs in the public and private sectors; and it goes on to point out that when holidays, pension arrangements and job security are taken into account, firefighters are even better placed.

That is borne out by the recruitment and retention figures, which show large numbers of applicants for each fire service vacancy, even during a period of steady economic growth. Sir George Bain's report points out that the case for a significant pay increase rests on a commitment to significant change delivering fundamental reform of the current fire service. In return for implementation of the reform package, the pay bill would increase by around 4 per cent from this November and a further 7 per cent in November 2003.

Sir George Bain's position paper also criticises all the principal stakeholders—the Government, the local authority employers, senior management of the fire service and the fire service unions for not making much more progress over the past 25 years. We accept that criticism. However, the independent review gives all sides an opportunity to address all the issues that have been identified and to deliver a modern, effective service for everyone.

It is encouraging that the early indications from the independent review echo much of what we said in our own consultation policy paper, "The Scottish Fire Service of the Future". That paper was debated in Parliament in May of this year and was welcomed by all sides. It set out our vision for the fire service in Scotland and reflected our aim to provide public services that are responsive to peoples' needs, are efficient and deliver high quality.

I am desperately disappointed that I have to make this statement this evening. I can only urge the FBU to call off its industrial action and commit to engaging with the independent review. It is vital that all sides continue constructive dialogue to reach a settlement that is fair to firefighters and to the public they serve.

The Deputy Presiding Officer: Thank you, Mr Wallace: that took less than 10 minutes. In accordance with Murray Tosh's ruling last week, I

shall allow the opener in the SNP's case up to two minutes and in the Tories' case up to a minute and a half, provided that what they say is peppered with questions. Thereafter, there will be quicker questions and answers.

Tricia Marwick (Mid Scotland and Fife) (SNP):

I add my regrets to those that the Deputy First Minister expressed that we are now in the midst of a firefighters' strike for the time in 25 years. I also regret the fact that the Deputy First Minister used the majority of his statement to attack the firefighters rather than to address his responsibility to say how the people of Scotland can be protected.

The SNP believes that public safety is paramount and both the Government and the firefighters should show good will by settling the dispute before the public and businesses in Scotland are harmed. In the light of that, the SNP calls for a return to a moratorium by the FBU on strike action. However, the Government must enter genuine negotiations to settle the dispute.

The Deputy Presiding Officer: Ask a question, please.

Tricia Marwick: I am coming to it. Let us be clear: the breakdown of the original negotiations was caused by Government interference in the normal negotiation process between employers and firefighters.

I ask the Deputy First Minister what pressure the Scottish Executive will bring to bear on UK ministerial colleagues to resolve the dispute before lives are lost in Scotland?

Mr Wallace: Anyone who listened carefully to my statement will realise that I did not attack firefighters. Far from it: I paid tribute to them and said that no one doubts their dedication and bravery. It is quite proper that all emergency services are held in high regard for their professionalism and dedication. I am proud to put that on the record again.

I am not entirely sure what course of action Tricia Marwick was suggesting. When she got round to her question, she asked about putting pressure on the UK Government. I assure the Parliament that we are in regular contact with the office of the Deputy Prime Minister on all the issues surrounding the firefighters' strike. We echo the calls that the UK Government has made for the union to return to the negotiating table. The position paper that Sir George Bain has produced provides a good basis for negotiation. Discussions at the negotiating table represent the only means of making the kind of progress that I think Tricia Marwick said she wants to see.

Lord James Douglas-Hamilton (Lothians) (Con): Does the Deputy First Minister accept that,

in dealing with the issue, the protection of life should be of paramount importance? Will he explain to the Parliament why the service personnel who will be engaged in firefighting have been given only two days' training? Will he make arrangements to ensure that those personnel will have access to cutting equipment and breathing apparatus in fire service stations? Can he assure us that every effort will be made to ensure that those personnel have the basic training?

Is the minister aware that the Army has only 32 pieces of cutting equipment, compared with the 240 pieces of such equipment that the fire brigades use? Such equipment is vital for responding to severe road accidents. If the dispute becomes prolonged, will the minister consider providing service personnel with additional training on fire appliances, which we called for some time ago? Finally, is he aware that a firefighter recently told me that his dissatisfaction with the handling of the matter was causing him to resign from the Labour party?

Mr Wallace: Lord James Douglas-Hamilton asked me to assure him that the saving of life is a priority. It is the priority. On training, I can inform the Parliament that personnel have been trained and equipped to provide basic fire and rescue cover. The level of training is dependent on the skill that individual service people hold and the role that they are likely to perform. Some fire and rescue teams are trained and have experience in the use of breathing apparatus and other specialist equipment. Additional personnel have also been trained in those techniques. Other support training includes driver training, first aid training and specialist equipment maintenance training.

On access to local authorities' equipment in fire stations, it would not always be possible to use fire service vehicles for training. If Lord James Douglas-Hamilton reflects on the situation, he will realise that, at this time, asking the military to cross picket lines to obtain equipment could exacerbate the situation. As the Prime Minister indicated last month, that issue is being kept closely under review.

The Deputy Presiding Officer: Can we have much tighter questions and answers now, please?

Karen Gillon (Clydesdale) (Lab): Obviously, there are concerns about response times in rural constituencies such as mine. Response times in such areas are already slower than response times in urban areas. What action is being taken to ensure that the Army will be able to make responses in places such as Leadhills in my constituency?

Mr Wallace: Decisions about where to deploy the green goddesses and supporting vehicles were taken with maximum capability in mind. No

one has made any secret of the fact that the cover that is being provided is not as good as, and does not represent a full substitute for, the cover that was in place until 6 o'clock this evening.

For rural areas, the possibility of cover from non-striking retained firefighters and from volunteer firefighters has also been taken into account. Clearly, if the situation changes, the deployment strategy will be reconsidered by the military and by the relevant fire-master.

Kay Ullrich (West of Scotland) (SNP): What specific training has been given to the military personnel who would be required to attend an emergency situation at, for example, the Hunterston nuclear power station? Is the minister confident that any such training will be sufficient to deal with a potential nuclear emergency?

Mr Wallace: I have explained some of the training that has been given. Kay Ullrich will recognise that nuclear power stations already have robust multi-agency contingency plans, which are tested regularly. Obviously, the owners of nuclear stations have been obliged to review, where appropriate, how their site safety case will be affected by the dispute.

If there were an incident at a nuclear establishment during the period of the strike, the on-site emergency teams would be supported by the temporary military firefighting resources. If there were a major incident, the military would provide whatever support it could. That support, I accept, would be more limited than that which is currently provided by the fire service. As Kay Ullrich may be aware, discussions have been taking place nationally with the Fire Brigades Union to establish emergency arrangements and to see what scope there is in the event of a major catastrophe of the kind to which Kay Ullrich referred.

George Lyon (Argyll and Bute) (LD): On behalf of the Scottish Liberal Democrats, I express our disappointment that the Fire Brigades Union has gone ahead with the strike instead of engaging positively in the review process chaired by Sir George Bain. A great proportion of the fire brigades' work load is dealing with road accidents and extricating victims who find themselves trapped in their cars. I understand that the Army is not well equipped to do such work. Will the minister give an assurance about how the emergency services will be able to deal with road accidents during the strike?

Mr Wallace: For road accidents, instead of the green goddesses, the rescue equipment support teams or the breathing apparatus rescue teams would be deployed. Those are self-contained teams that include three trained personnel together with a driver and that offer breathing

apparatus as well as chemical protection in case of a chemical spill. Those rescue teams have been trained and, as Lord James Douglas-Hamilton indicated in his question, cutting equipment has been made available to them.

Dennis Canavan (Falkirk West): Will the minister condemn the provocative actions and language of some of his Westminster counterparts who, in accusing the FBU of bully-boy tactics, have tried to blame the union in advance of the strike for any loss of life that might occur during it? Bearing in mind the essential service that firefighters provide and the fact that their present pay is less than the UK national average, will the Executive use its influence to try to reopen meaningful negotiations to ensure a fairer deal for the firefighters, so that they can return to work with justice and dignity?

Mr Wallace: I have certainly tried to avoid saying anything that might be thought to be provocative in the sense that Dennis Canavan mentioned, as that would not be helpful in encouraging members of the Fire Brigades Union to return to the negotiating table. I encourage employers and the Fire Brigades Union to negotiate. I believe that the position paper that Sir George Bain gave to the respective parties at the beginning of this week provides the basis for such negotiation.

Mr Duncan McNeil (Greenock and Inverclyde) (Lab): Does the Deputy First Minister agree that strike action must be regarded both as a failure and as a reflection on both sides of any dispute? Does he accept that the firefighters' job has changed over the years and that they require a pay formula that recognises the current situation? Does he agree that the dispute can be resolved only around the table and that firemen would be well advised to retain the public support that they have by possibly providing emergency cover in serious situations?

Mr Wallace: Duncan McNeil is absolutely right to reflect on the differences in the nature of the firefighters' job today compared with when the Fire Services Act 1947 was passed. Our white paper, "The Scottish Fire Service of the Future", reflects many of those changes. As I have said, discussions have been taking place between the secretary of the union and the Deputy Prime Minister on responding to major emergencies, to see whether there is any scope. I re-echo what I have said more than once this evening. There ought to be a return to the negotiating table, because it is only at the negotiating table that we will make progress.

Ben Wallace (North-East Scotland) (Con): Will the Deputy First Minister detail what he has done during the four weeks since the initial strike ballot to update armed forces personnel and give them

access to more equipment and training, so that tonight they can be bettering public safety? I ask him and other members to reflect on the fact that young Scottish men and women are tonight manning 50-year-old fire engines and that they do so ill equipped, considerably lower paid than firemen and without the right to strike.

Mr Wallace: I assure Ben Wallace that considerable efforts have been made to obtain equipment. When the union ballot was announced, concerns were expressed about the amount of cutting equipment that was available, not just in Scotland but throughout the United Kingdom, and considerable efforts were made to increase the number of pieces of cutting equipment that could be made available. Those efforts were undertaken with some considerable success. I accept that the green goddesses are old, but their pumping efficiency is acknowledged to be effective. I certainly do not wish to detract from the efforts that the military have made or the training that they have done. I acknowledge, as I always have, that that is not a substitute for the kind of fire service cover that we have from the ordinary fire service. Nevertheless, the contingency arrangements that have been put in place have been the product of detailed consideration and planning.

Michael Russell (South of Scotland) (SNP): I will ask the minister specifically about schools. Have the floor plans of every school in Scotland been made available to the temporary personnel, as they are to fire services? What special training has been given to the people whom Ben Wallace mentioned, who will be dealing with young people in emergency situations? That training takes place for regular firefighters, some of whom I have met in Ayrshire and Lanarkshire and whom I think have been driven to strike action by the Government's intransigent attitude.

Mr Wallace: At a much earlier stage, the education and health departments issued circulars and made contact with health boards and education authorities to encourage them to examine the fire precautions for each of the establishments for which they have responsibility. That was done some weeks ago, when there was a possibility of a dispute being imminent.

As I said in my statement, we must take particular care of those who are more vulnerable in our community, and that includes the young. The basic messages are the same for the young and for people of any age. The simple message is, "If you are caught up in a fire, get out, stay out and dial 999." That applies regardless of whether there is a strike, but this is the moment to emphasise again basic safety messages, which apply to young and old alike.

Cathy Peattie (Falkirk East) (Lab): What discussion has taken place on the response in the

event of a major incident in the petrochemical industry in Falkirk East?

Mr Wallace: Discussions took place earlier today between the secretary of the union and the Deputy Prime Minister to identify whether there are major incidents for which the firefighters would return. I understand that the word “catastrophic” has been used in connection with such incidents, but I have to accept that the threshold that would bring about a return to work is not entirely clear. There are obvious concerns about the petrochemical industry and I have no doubt that those concerns will have been worked into the plans and contingency arrangements that the military have considered.

Tommy Sheridan (Glasgow) (SSP): Does the minister accept that the firefighters’ wage claim is based on independent research of what firefighters need to bring them into line with other professions? How does he answer the firefighters who suggest that he and others in the chamber were awarded a 13 per cent wage rise this year and are currently paid four times what a firefighter is paid? Does he agree that the best thing that the Scottish Parliament could do would be to call on Westminster to increase taxation on the wealthy in this country—an extra 10p in the pound for earnings over £50,000 and an extra 20p in the pound for earnings over £100,000—so that we can pay the firefighters what they deserve? They are certainly worth every single penny of their claim, which could not be said about people in the chamber.

Mr Wallace: I am sure that Mr Sheridan heard me when I quoted what Andy Gilchrist said in July 2000, when he applauded the fact that the formula that was negotiated in 1977 had ensured that the firefighters’ wages were among the better in the public service. I have not heard Tommy Sheridan ask the Fire Brigades Union to get back to the negotiating table, but it is only at that negotiating table that we will get a settlement.

Meeting closed at 19:31.

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