ENTERPRISE AND CULTURE COMMITTEE

Tuesday 12 September 2006

Session 2

£5.00

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by Astron.

CONTENTS

Tuesday 12 September 2006

ENTERPRISE AND CULTURE COMMITTEE
20th Meeting 2006, Session 2

CONVENER

Alex Neil (Central Scotland) (SNP)

DEPUTY CONVENER

*Christine May (Central Fife) (Lab)

COMMITTEE MEMBERS

*Shiona Baird (North East Scotland) (Green)
*Richard Baker (North East Scotland) (Lab)
*Susan Deacon (Edinburgh East and Musselburgh) (Lab)
*Murdo Fraser (Mid Scotland and Fife) (Con)
*Karen Gillon (Clydesdale) (Lab)
*Michael Matheson (Central Scotland) (SNP)
*Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD)

COMMITTEE SUBSTITUTES

Mark Ballard (Lothians) (Green)
Donald Gorrie (Central Scotland) (LD)
Fiona Hyslop (Lothians) (SNP)
Margaret Jamieson (Kilmarnock and Loudoun) (Lab)
David McLetchie (Edinburgh Pentlands) (Con)

*attended

THE FOLLOWING ALSO ATTENDED:

Jackie Baillie (Dumbarton) (Lab)
Mark Ballard (Lothians) (Green)
Derek Brownlee (South of Scotland) (Con)
Dennis Canavan (Falkirk West) (Ind)

THE FOLLOWING GAVE EVIDENCE:

Tom McCabe (Minister for Finance and Public Service Reform)
Louise Sutherland (Scottish Executive Transport, Enterprise and Lifelong Learning Department)
Allan Wilson (Deputy Minister for Enterprise and Lifelong Learning)

CLERK TO THE COMMITTEE

Stephen Imrie

SENIOR ASSISTANT CLERK

Douglas Thornton

ASSISTANT CLERK

Nick Hawthorne

LOCATION

Committee Room 5

Scottish Parliament

Enterprise and Culture Committee

Tuesday 12 September 2006

[THE DEPUTY CONVENER *opened the meeting at 14.01*]

St Andrew's Day Bank Holiday (Scotland) Bill: Stage 1

The Deputy Convener (Christine May): Good afternoon everybody. The technological issues are now resolved, so welcome to the 20th meeting of the Enterprise and Culture Committee in 2006. We have apologies from Alex Neil, the convener.

I welcome the Minister for Finance and Public Service Reform, Tom McCabe, and Dennis Canavan, who are here for agenda item 1, which is consideration of the St Andrew's Day Bank Holiday (Scotland) Bill at stage 1. The committee will take evidence from the minister. Would you like to make an opening statement, minister?

The Minister for Finance and Public Service Reform (Mr Tom McCabe): Yes. Thank you, convener, and good afternoon to you and the committee members. Thanks again for the opportunity to come along and say a few words about the St Andrew's Day Bank Holiday (Scotland) Bill.

I begin by acknowledging all the work that has been done on the bill, including the additional work that we gave the committee following the previous stage 1 consideration. We recognise that the bill looked at first glance like straightforward legislation, but after closer examination we all now know that that is not the case.

When I came along to the committee last December, I said that I would be happy to consider the committee's conclusions about ways in which to celebrate St Andrew's day that were based on a rigorous examination of the options. I was pleased to see that the committee decided to undertake further research on how national and bank holidays are celebrated in other countries, and to consider the various consequences of such holidays in terms of costs and benefits. We welcomed the opportunity for the Executive to provide input to the steering committee for the research. I think that that was another good example of Parliament and the Executive working together to seek solutions.

The final report on the research that was undertaken by Experian Business Strategies illustrates the complexity of the issue and the difficulties in dealing with the bill. The committee will reach its own conclusions, but it seems to me that the Experian report in itself did not provide decisive evidence in favour of a new bank holiday on St Andrew's day. However, I acknowledge that the report is open to interpretation, especially as it has not produced a robust assessment of the costs and benefits; indeed, it seems to suggest that the economic impact of a bank holiday could be either positive or negative. The report does give us useful information about how national holidays are celebrated in other countries, along with the legislative framework that accompanies them.

I understand that in their discussions with the committee at last week's meeting the consultants said that the primary purpose of national holiday legislation in comparator countries was to protect the rights of workers in relation to those holidays. As we know, the bill that we are considering would not achieve that. However, the bill has brought about a great deal of discussion about how our national day should be celebrated, which in itself is a considerable achievement for the member in charge of the bill.

I emphasise that the Executive remains committed to improving the celebration of our national day and I think that our actions have already amply demonstrated that. Government should take a lead, which must be consistent over a long time. It was generally acknowledged that we were successful last year in upscaling our St Andrew's day celebrations at home and abroad. We will continue that, and we will do so this year under the unifying theme of one Scotland, many cultures, with an emphasis on young people celebrating our modern Scotland. In those endeavours, we expect a strong partner to be the Parliament itself. In that regard, we look forward very much to hearing the committee's suggestions on what more we can do to celebrate our national day.

I turn to the bill. The bill will not give anyone an automatic right to an additional day's holiday. It is important that we are clear and honest with people in Scotland about that. The bill is aspirational. It seeks to improve our celebration of St Andrew's day and to encourage more people to enjoy a holiday while engaging in those celebrations. That chimes well with the broad consensus that exists to improve the celebration of St Andrew's day. The Executive agrees with that consensus.

If the Parliament seeks to pass the bill, the Executive will not stand in its way. However, we believe that Parliament should, at the same time, endorse a statement that makes it clear that the

bill creates not an automatic entitlement to a holiday, but a legal framework to encourage employers and employees to substitute an existing local holiday in favour of St Andrew's day.

We have all been considering what the best way would be for the Executive and the Parliament to support the celebration of St Andrew's day. As the committee will be aware, the First Minister and the member responsible for the bill, Dennis Canavan, have agreed a statement, which was attached to the letter that I sent to the convener yesterday. I am sure that that letter has been circulated. We hope that the committee and, subsequently, the Parliament, will endorse that course of action.

I said earlier that this has not been a straightforward bill. I emphasise strongly that the Executive believes that, over time, the bill could contribute to encouraging greater national celebration of St Andrew's day. On that basis, we will not block the passage of the bill into law. The consideration has not been straightforward, and we appreciate the time that the committee has taken over its consideration of the bill. I also thank you for giving me the opportunity to attend the committee meeting this afternoon. If members have any questions, I will do my best to answer them.

The Deputy Convener: Thank you. Members now have an opportunity to ask questions.

Dennis Canavan (Falkirk West) (Ind): I thank Tom McCabe for that helpful statement. As you know from my previous statements, my preferred option was—and still is—that the St Andrew's day national holiday should be an additional holiday. However, I am realistic enough to recognise that my bill has virtually no chance of getting parliamentary approval without Executive support. It was in that context that I agreed to the joint statement that I made yesterday with the First Minister. Nevertheless, I hope and expect that, once the principle of a St Andrew's day national holiday is established, recognition of that holiday will grow from year to year and an increasing number of employers will grant it as an additional holiday for their employees. That remains to be seen.

I would like to ask the minister a question on a different point. The Executive previously expressed the view that the bill, of itself, would not create a national holiday. Does the minister think that it would be helpful if the committee were to produce a report containing some suggestions of additional measures that, together with the bill, could help to ensure a national celebration of St Andrew's day?

Mr McCabe: I do not want this to turn into a mutual admiration society, but I acknowledge the fact that the approach that Dennis Canavan has taken has been extremely helpful. We have engaged in a joint search for solutions, which has been extremely productive.

As I said a few moments ago, we look forward to the committee's report and the additional suggestions that the committee may make regarding how we can continue to improve our celebration of our national day. I would welcome any suggestions that the committee may want to make in that regard.

Dennis Canavan: I have one further question. In the letter that you sent yesterday to the convener, you refer to the fact that the Executive undertook consultations with stakeholders. Who were the stakeholders and did they all agree to what the Executive now proposes?

Mr McCabe: The people to whom I spoke agreed that it was an acceptable and sensible way forward.

Dennis Canavan: Who were the stakeholders?

Mr McCabe: They included various members of the Parliament who had signed the bill and were considering their position. They were aware of the position that the Executive took at the stage 1 debate and were encouraged that there was a possibility of finding a way forward. There were also external stakeholders, such as the business community and others, who were pleased that we had arrived at a position that would allow the bill to pass into law, but with the accompanying statement.

Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD): I have two questions for the minister. The first is quite general. You mentioned stakeholders. Yesterday, I met a journalist who asked me whether I knew the definitive list of national holidays in Scotland. There has always been some confusion about that. In my workplace, before I entered politics, it was always an open-ended subject. I welcome what you and Dennis Canavan have said today, which is a positive way forward. How will what you propose be disseminated to the workplace? Does the Executive have a role in that? At the moment, there is confusion about what is and is not a national holiday. I am thinking of the two May holidays. Will industry, business, local government and so on be given advice on what exactly is meant and how it can be tied into the present context?

Mr McCabe: When I attended the committee previously, I said that we would be more than happy to encourage employers, especially employers in the public sector, to engage with the people whom they employ and to seek their views on when it will be best for them to take the range of holidays that are available to them. We are prepared to do the same with the staff of the

Scottish Executive. By taking a lead, the Scottish Executive will send a signal to others, especially in the public sector. I mentioned that one business organisation was pleased with the situation that had been arrived at. Private sector employers are aware that they are involved in a constant dialogue with the people whom they employ. Employers will always want to test what range of holidays best suits the people whom they employ, because by making available the holidays that best suit those people, they make a positive contribution to their businesses.

Mr Stone: In the joint statement by Dennis Canavan and the First Minister, reference is made to the fact that

"A model of this approach is to be found in the Scottish Parliament itself which decided in 1999 to substitute St Andrew's Day for an existing September holiday."

I am not suggesting that you should be prescriptive, but have you—or the Scottish Executive more generally—thought about what might be the most appropriate day for which to substitute St Andrew's day?

Mr McCabe: It would be prescriptive to offer my thoughts on the matter, so I do not want to do that. It is a matter for discussion by individual employers. I have said that we will ensure that approaches are made to trade unions in the Scottish Executive. Those approaches will not be along the lines of suggesting a day. Instead, we will initiate a discussion and allow the people who work for us to consider the options that they think are most appropriate.

Murdo Fraser (Mid Scotland and Fife) (Con): I very much welcome the conversion of the Scottish Executive to the stance that the Conservative party and I have taken on the issue since day one—namely, that we should have a St Andrew's day holiday, but that it should not be an additional holiday and should be substituted for a holiday at another time of year. We could have reached this stage much earlier. When the stage 1 debate was held on 6 October last year, the Executive argued against the stance that the Conservative party and I took. What were the key factors in changing your mind?

Mr McCabe: I was going to say that I do not mean to be disrespectful, but what I say will sound disrespectful. The opinions of the Conservative party are hardly likely to guide the overall consensus of opinion in the Parliament. You may wish that to be the case at some point in the future, but that is not the current situation.

The Executive has been consistent in saying that it seeks to improve the celebration of our national day. I said earlier that by our actions we have proved our sincerity. I am confident that in the years to come we will continue to do so. We also said that we did not want to mislead people. I still think that we are being consistent today. The Executive's position is not so much a conversion as a clarification. I always believe that, when people engage in dialogue, we are far more likely to find solutions. I am pleased that, over time, we have engaged in dialogue with the member in charge of the bill and that that has produced the potential for a solution.

14:15

Murdo Fraser: I do not mean to be disrespectful, but the minister has not answered my question, which was about the factors that led the Executive to change its mind on the matter. However, if the minister will not answer that question, let me try another one.

The Executive's conversion came subsequent to the committee commissioning a report from Experian Business Strategies, which, frankly, provided few conclusions, if some interesting background. The report cost in the region of £25,000. Could that money not have been saved if the Executive had come to a view at an earlier opportunity?

Mr McCabe: First, I answered your question about the factors. I said that a major factor was the Executive's desire to improve our celebration of St Andrew's day and to find ways in which we could include in that the intention behind the bill. I answered your question, but you are entitled to your opinion on the matter.

If I were to allow my cynicism to come to the fore, I might suggest that the report will hardly be the first consultants' report that has been less than conclusive. There is perhaps a series of lessons that we could learn before we commission consultants.

Michael Matheson (Central Scotland) (SNP): Good afternoon, minister. I welcome the Executive's conversion to the proposed St Andrew's day holiday. I want to raise two points.

First, I note that, as Dennis Canavan mentioned, your letter of yesterday states that the Executive has been in further consultation with stakeholders. I am conscious that the decision to go for a local holiday means that the public sector, especially our local authorities, will have a key role in showing leadership within local communities by designating a local holiday that should be switched to St Andrew's day. What feedback did the Executive get from local authorities about the possibility of switching a local holiday to St Andrew's day?

Mr McCabe: I think that local authorities said that, as they have demonstrated for a long time, they are keen to speak to their employees. Local

authorities in different parts of Scotland will be keen to engage in a dialogue with their employees about the possibilities. There must be a dialogue rather than a diktat.

Michael Matheson: If the bill is passed, how will the Executive try to encourage bodies such as local authorities to ensure that they switch one of their local holidays to St Andrew's day?

Mr McCabe: We can do that by indicating to people that we have approached our own employees and offered them the opportunity to consider the St Andrew's day holiday. For instance, the Executive can suggest to local authorities that we are keen to improve the comprehensive nature of the way in which we celebrate our national day and that, if their employees consider taking a holiday on that day, the celebrations might be improved. Ultimately, the decision is for the people whom local authorities employ. Those are two obvious examples of how the Executive can make its view very clear to different parts of the public sector.

Michael Matheson: What factors led the Executive to decide that the best way to pursue the issue is to try to switch a local holiday, rather than a national holiday, to St Andrew's day?

Mr McCabe: I do not know that anyone has put a particular emphasis on the fact that it will be a local holiday. It is for employers to approach their employees and, considering the totality of their holidays, engage in a discussion with people about the possibility of moving one of those holidays to St Andrew's day.

Michael Matheson: Would you be happy for people to switch one of the several national bank holidays that we have, rather than one of the local holidays, to St Andrew's day?

Mr McCabe: Ultimately, the decision is for them. I would be very unhappy if anyone considered moving May day; I think that that would be tragic, but most people in Scotland would not do that. Some people might raise it as a possibility, but my strong view is that such a move would not be advisable.

Michael Matheson: How about going for the Queen's birthday?

The Deputy Convener: We can discuss that in detail when we discuss our report.

Richard Baker (North East Scotland) (Lab): As you rightly said, minister, the bill on its own will not create a St Andrew's day holiday; other work will need to be done to support that aim. Will the Executive continue to promote events that help people to celebrate St Andrew's day? I hope that you will develop a number of events in that respect.

The minister will be aware that, for a number of years, the Scottish Trades Union Congress has used St Andrew's day to celebrate Scottish internationalism and anti-racism. Will the Executive use examples such as that to inform its approach to organising events on a national basis to celebrate St Andrew's day?

Mr McCabe: Certainly; as I have indicated, we very much wish to improve the range of celebrations that mark our national day. We will do that on an on-going basis and, I hope, in conjunction with other organisations. The more that we do that, the more we will add to the overall weight of the celebrations. Certainly, our minds are not closed to any potential option.

If I may, convener, I will return to Mr Matheson's question on moving the Queen's birthday. I would not want any misunderstanding to arise or the impression to be given—if Mr Matheson was speaking on behalf of the committee—that the committee has something against the Queen. I am not sure whether that is what Mr Matheson meant, but I am sure that he will want to clarify what he said.

Michael Matheson: I would be happy for the Queen's birthday to be moved.

The Deputy Convener: I am sure that Mr Matheson will put any proposal to the committee in due course. We will decide on any proposal that we receive.

Mr McCabe: I am sure that Mr Matheson will not mind my portraying what he said as the SNP having something of a disregard for the Queen.

Susan Deacon (Edinburgh East and Musselburgh) (Lab): Minister, you said that lessons may need to be learned before consultants are commissioned again. Can the Parliament or the Executive apply other lessons from their experience of the bill?

Mr McCabe: We all benefit from discussion. The view that I am about to express is not a new one. Indeed, I express it as someone who was the Minister for Parliament. At times, we can run too quickly at legislation. If there is a bit more space in the timetable, we can take the opportunity to think a bit more about legislation and to indulge in conversations that are not allowed for under a tight timetable. The lesson that we can learn from the bill is that getting the chance to step back a bit may allow us to make an examination of the issues. Frankly, in this case, time did not allow for that.

Susan Deacon: For example, using the bill as but one experience, will the Executive reflect on the ways in which it could engage with non-Executive bills at an earlier stage? I am thinking in

particular of instances where there is an element of shared aspiration and objective.

Mr McCabe: That could be the case, yes. The Parliament is only seven years old; we will still be learning lessons when it is 70 years old. It would be foolish of me to say that there will never be a case for saying that there are no ways in which we could, on reflection, approach certain subjects differently.

Susan Deacon: The joint statement says:

"The Bill is largely symbolic".

At some of the earlier stages of our consideration, the query was raised whether it was appropriate to use legislation in a symbolic fashion. I am concerned about that. Given, as you said a moment ago, that you are a former Minister for Parliament, what are your thoughts on the fact that we may be moving towards putting on the statute book legislation that is, as the joint statement says, "largely symbolic"? Are you concerned about the precedent that that may set?

Mr McCabe: To be honest, I was concerned about that and I continue to be concerned, although my concern is more for the institution of the Parliament than anything else. One of the worst criticisms that has been levelled against us is that we do not take our legislative responsibilities seriously. Some people have alleged—I do not necessarily agree with them—that we have concentrated on legislation that is not exactly of the moment, if I can put it that way. On this occasion, the accompanying joint statement qualifies and explains clearly to people exactly what we are doing. It is always extremely important that we treat with great caution our ability to legislate. We must always avoid the possibility of giving people the impression that we are being, in some way, flippant about it.

The Deputy Convener: On the Experian report, I remind Mr Fraser that we specifically asked the consultants not to come up with conclusions, but simply to do research.

Minister, what economic and social benefits do you think will accrue to Scotland as a result of our agreeing to the bill?

Mr McCabe: The economic benefits are hard to define, as the Experian report demonstrated. People might have different opinions on the economic benefits, but it is hard for anyone to say conclusively that they have empirical evidence that there would be a benefit one way or another.

In terms of the social benefits, anything that adds to the cohesiveness of our society and increases the feeling among people in Scotland that they are part of a single unit and that there is a purpose in celebrating our shared history and tradition is a good thing. One of the great concerns in this day and age relates to communities breaking down and people suffering because of individualism and a lack of regard for others. If this celebration, along with other activities, helps to improve that situation and increases individuals' feeling that they are part of something that matters, that would be a big benefit.

The Deputy Convener: Do you see merit in the argument that the holiday will extend what is traditionally a fairly low season for tourism and festival-type activities into something that extends from the beginning of December to the end of January?

Mr McCabe: The proposal certainly raises that possibility. However, it is clear that imaginations have to be applied to the way in which we develop the celebration. The fact that the celebration might not be focused on one day and might, in time, spread out on either side of that day could contribute in that regard.

We should remind ourselves, however, that this country is increasingly successful in attracting visitors and that low seasons are less low than they used to be. That is a good thing. If the St Andrew's day celebration can contribute to that trend, all the better.

The Deputy Convener: The Experian report refers to the unit that has been set up by the Irish Government to revive interest in the St Patrick's day celebration, particularly in Ireland. It also refers to work that has been done in other countries that have recently created holidays based around national days. Have you yet given consideration to that? If not, are you prepared to do so?

Mr McCabe: We have not considered a specific unit.

St Andrew's day has a lot to contribute, but we are thinking about the way in which Scotland makes its mark throughout the year. Every year, we go to the United States of America and have a week of celebrations around tartan week. That brings us to the fore in various parts of the USA. Our thinking is to do with how we can keep that emphasis up, not only over a longer period of time but across a wider geographic area. We are considering whether there are things that we could do in specific areas to raise the profile of our country in other countries and to make people in those countries aware of our history and of our contemporary society.

The Deputy Convener: Late in the day, Jamie Stone has asked to be allowed to ask a short question. I propose to indulge him.

Mr Stone: You are good to me, deputy convener, it cannot be denied.

Minister, can I take it that you think that it would be a good idea to build on the links that exist between Scotland and other countries that have St Andrew as their national saint, such as Russia and Greece?

Mr McCabe: I believe that those links provide opportunities. As I said, we believe that we should be upscaling our activities at home and abroad and the examples that you have given are useful in that regard. Many countries have St Andrew's night celebrations. An invitation has been received to attend one outside our borders, and there may be other invitations. We have to pay attention to those things and underline to people that the way in which St Andrew's day is celebrated in other countries is important to us.

14:30

The Deputy Convener: I thank committee members, Dennis Canavan, the minister and his officials.

Item 2 invites the committee to consider the emerging issues and its stage 1 report.

Dennis Canavan: That was a very helpful session. We should follow up the minister's response to my first question. At the previous stage 1, the Executive was rather critical and said that the bill would not achieve its objective. It implied that that was what the committee agreed, but in fact the committee was more specific in saying that the bill "of itself" would not achieve the objective of a nationwide celebration of St Andrew's day. The phrase "of itself" is significant.

With respect, I suggest that committee members might consider reiterating that statement, along with agreement to support the general principles of the bill. Taking on board the previous comment by the Executive, the committee might say that the bill of itself would not achieve the objective but that the bill accompanied by certain recommendations would. There are enough suggestions in the Experian report. If there is not unanimity in the committee about the validity of some of the suggestions, they could be listed simply as suggestions rather than as firm recommendations.

The Deputy Convener: Thank you. Does any other member have any thoughts on our approach to the stage 1 report? Our previous report was relatively short, and the bill is a relatively short one. Given the positions that appear to have been adopted, I wonder whether members want to prepare a much lengthier report this time or whether we are content for the next report to be similarly short, with other matters left for debate in the chamber.

Murdo Fraser: We need to address some of what Dennis Canavan has said on the wider issues. We prepared a very brief report last time, accepting that what the bill seeks to achieve is fairly limited. Our new report should probably expand on the broader issues, as there is quite a lot in the Experian report about the celebration of national days in other countries. It is not for the committee to dictate how St Andrew's day might be celebrated, but it would be helpful if our report at least explored some of the issues.

The minister said that the Executive was minded to support the bill subject to the caveat that it would not, of itself, create a holiday. He said that if the Executive encouraged employers to grant a holiday on St Andrew's day, it would be in substitution for a holiday at a different time of the year. I appreciate the fact that members may have different views, but I wonder whether our report should reflect that opinion of the Executive.

The Deputy Convener: We can probably judge from members' comments whether it is appropriate to include that and whether we will get consensus on that.

Susan Deacon: I am content with the general direction of travel and the likely end result. On numerous previous occasions in the committee, I have said that I am personally supportive of the idea of moving towards a national celebration of St Andrew's day. It would be honest of us to say that the bill would not deliver an additional holiday. It is important to clarify that.

I am not uncomfortable with the substance of the outcome, but I am uncomfortable with the route by which we got to it. There are several aspects of the way in which the Parliament and the Executive have dealt with the issue that we should reflect on for the future. It is about two years—Dennis Canavan will correct me if I am wrong—since the proposal was initially introduced, yet we have only really been in the position to consider substantial research on the matter over the past few weeks.

The issue of consultation has also been mentioned. With respect to Dennis Canavan and the minister, who referred to additional consultation today, there has been nothing like the degree of consultation, discussion and dialogue on the bill that there would be on an Executive bill. As I alluded in my question to the minister, that shows either that the Executive needs to engage more fully with, and apply its resources and inputs to, non-Executive bills at an earlier stage or that the Parliament needs to take a different approach to how non-Executive bills are handled and resourced at an earlier stage.

It is important that we note that it is agreed that the bill is symbolic. My view is that it should not set any precedent regarding the way in which we use our powers as a legislature in the future.

The Deputy Convener: I propose to go round the table and ask all members whether they have comments to make.

Karen Gillon (Clydesdale) (Lab): I align my view with much of what Susan Deacon has said. I am slightly disappointed that the Executive's decision was not conveyed to the committee in the first instance, but so be it. The point that Susan Deacon makes about not setting a precedent for the kind of legislation that we pass is important. We should legislate for a purpose rather than for symbolic reasons.

Michael Matheson: The Executive has finally been converted to the idea of having a St Andrew's day holiday, but I am not persuaded that it has thought out exactly how it intends to build on that to the extent that is possible, given what the Experian report says has been achieved in countries such as the Republic of Ireland. If the Executive views the bill as symbolic, it is important that, in our report, we major on the need to ensure that the Executive builds in the right package of measures to support the bill to ensure that the celebration happens in an effective way.

I am also not clear about the minister's response concerning local and national holidays. In his letter, he states that the bill

"would encourage employees and employers to substitute an existing local holiday in favour of a national St Andrew's Day holiday".

In Falkirk, there was a local holiday on Monday. Is the Executive suggesting that people should substitute the St Andrew's day holiday for that local holiday, or is it suggesting that people should substitute it for one of the existing national bank holidays? From the minister's response, I got the impression that he was saying that it could be one of the national bank holidays. We need clarity on that. The minister's letter suggests that it is only local holidays that the Executive thinks should be altered. However, some people who support the idea of having a St Andrew's day holiday that is additional to the existing holidays or that replaces one of the existing bank holidays might not want to change the local holidays. We must try to get the Executive's position clarified.

The Deputy Convener: I must invite you to Fife sometime, to let you see how patterns of bank holidays and local holidays mean different things in different places. In some parts of Fife, people do not take bank holidays but take their holidays at different times. I suspect that something similar happens in the rest of country, with people following local traditions. Whether the new holiday is a bank holiday is likely to be irrelevant to many people. However, I take Michael Matheson's point.

Richard Baker: The research showed that in places such as France employers and employees reach agreements—I presume on a local basis—on which days should substitute for national holidays. I presume that here, too, things will be agreed locally and not imposed from the centre. I am therefore not sure how much more clarity we need from the Executive on this point at this stage.

I agree that the committee should suggest to the Executive—although not at great length—some other ways in which the Executive could promote St Andrew's day.

Susan Deacon has raised important issues of process and precedent that should be in our report. We should also reflect on additional measures that could support the aims of the bill.

Shiona Baird (North East Scotland) (Green): I think that we are missing a unique opportunity to celebrate Scotland fully by making the day a national holiday but, like Dennis Canavan, I accept that we have to go for second best. I do not know whether that view can go in our report, because other members might not agree with it.

I would like the report to reflect the evidence in the Experian report on the huge cultural and social benefits. We tend to get hung up on economic benefits or downturns, but the report suggests that we are missing out on the opportunities that other countries have picked up on.

The Deputy Convener: The minister reflected that view in his response to my question. As you say, the Experian report picked up on it too.

Mr Stone: I am not sure that I agree with the notion that we are accepting a conversion or something that is second best, or that we are missing an opportunity. Dennis Canavan thought up the idea and, because of the nature of this Parliament, was able to take the bill as far as he did. There has been constructive discussion. When Parliament decided to refer the bill to the committee for further work, it was an example of something that we do well. To see the First Minister stand together with Dennis and say what he said yesterday was good. I wonder whether that kind of thing could happen in Westminster. I do not know, but I think possibly not.

I am especially keen on the international opportunity for links with countries that share St Andrew with us. What a wonderful opportunity it could be for a link with Russia—a day when it celebrates Scotland and we celebrate Russia. That is something that we could all work on, because we are all brothers at the end of the day.

The Deputy Convener: Thank you—there have been useful comments from round the table. Will the Experian report be appended to our report for Parliament to consider? Will we be able to extract key points to support what members have said?

Stephen Imrie (Clerk): Yes, that will be the case.

The Deputy Convener: I hope that, when the issue is debated, we will reach a sensible compromise between the need not to impose another burden on the economy and the need to recognise that Scotland will have social and economic opportunities. I would like that to be reflected in our report—on the assumption that other members agree with me. We will find out next week whether that is so.

Do the clerks have sufficient information from committee members to allow them to bring us a paper next week?

Members *indicated agreement*.

Subordinate Legislation

The Robert Gordon University (Scotland) Amendment Order of Council 2006 (SSI 2006/404)

14:45

The Deputy Convener: I notice that the Deputy Minister for Enterprise and Lifelong Learning has arrived for item 4, but we must first deal with item 3.

Last week, we considered the Robert Gordon University (Scotland) Order of Council 2006 (SSI 2006/298). We will now consider the Robert Gordon University (Scotland) Amendment Order of Council 2006 (SSI 2006/404), which is a negative instrument. Is that right?

Louise Sutherland (Scottish Executive Transport, Enterprise and Lifelong Learning Department): It is indeed.

The Deputy Convener: Do you want to highlight the differences between the orders? I asked about the differences last week.

Louise Sutherland: Okay.

The committee considered SSI 2006/298 at its meeting on 5 September. As Natalie Laing from the university explained at that meeting, several orders have been made to fulfil the university's wish to change its body corporate from its governing body to the institution itself and to modernise its constitution, as set out in the new order of council. However, the order of council omitted to retain the governance arrangements of the existing university until it is closed and its assets are transferred to the newly constituted university. The amendment order will therefore reinstate the governance to the university until it is closed and the assets are transferred, which is now expected to take place at the beginning of October. The university has said that the omission will not have caused it any practical difficulties during the short period of time between the original order and the amendment order coming into force.

The amendment order also rectifies omissions that were brought to our attention by the Subordinate Legislation Committee in the definition of "Independent Governor" and the article relating to the validity of proceedings, where reference should have been made to elected as well as appointed governors.

The Deputy Convener: Thank you. No member has questions on the amendment order. Are members therefore content with it?

Members *indicated agreement*.

The Deputy Convener: I thank the officials for attending the meeting.

Fundable Bodies (Scotland) Order 2006 (draft)

The Deputy Convener: I welcome the Deputy Minister for Enterprise and Lifelong Learning and his officials, who are here to discuss the draft Fundable Bodies (Scotland) Order 2006, which is an affirmative instrument. I remind members that we have up to 90 minutes to debate the motion.

I invite the minister to speak to and move the motion.

The Deputy Minister for Enterprise and Lifelong Learning (Allan Wilson): Good afternoon, convener—or, in the light of the previous exchange, should I call you "sister"? We are all brothers and sisters.

I am grateful for the opportunity to speak to the motion and am sure that the debate on it will not take 90 minutes.

The draft order is to be made in exercise of the powers conferred by sections 7(1) and 34(2)(a) of the Further and Higher Education (Scotland) Act 2005 and it has the approval of the Scottish Further and Higher Education Funding Council. As members know, the order is required as a consequence of the Robert Gordon University changing its body corporate from its governing body to the Robert Gordon University and seeking to modernise its governance. In order for the Robert Gordon University to change its body corporate, it is necessary, under the terms of the Further and Higher Education (Scotland) Act 1992 to close and re-establish the university. The Robert Gordon University (Closure) (Scotland) Order 2006, which members will be aware is expected to come into force at the beginning of October, will give effect to the closure and the transfer of assets and staff to the new university that was established by the Robert Gordon University (Establishment) (Scotland) Order 2006 (SSI 2006/276).

The Scottish Further and Higher Education Funding Council may fund only institutions that are listed in schedule 2 to the Further and Higher Education (Scotland) Act 2005. The purpose of the order is to modify schedule 2 to that act to ensure that the funding council is able to fund the new institution that is established by SSI 2006/276.

The draft order will remove the words "The Robert Gordon University" from schedule 2 to the 2005 act and replace them with the words

"The Robert Gordon University, (as established by the Robert Gordon University (Establishment) (Scotland) Order 2006".

I move,

That the Enterprise and Culture Committee recommends that the draft Fundable Bodies (Scotland) Order 2006 be approved.

The Deputy Convener: I thank the minister for his remarkably clear exposition of the supporting arguments and the explanatory notes to the order. Victor Borge would have been proud of him. Do members have questions for the minister?

Allan Wilson: I am eternally glad that no one has questions.

The Deputy Convener: Do you want to make a closing statement? I can offer you up to 15 minutes.

Allan Wilson: No—I think that members have got the gist of the change.

The Deputy Convener: I think so.

Motion agreed to.

That the Enterprise and Culture Committee recommends that the draft Fundable Bodies (Scotland) Order 2006 be approved.

The Deputy Convener: I will suspend the meeting for five minutes for a comfort break.

14:51

Meeting suspended.

14:56

On resuming—

Bankruptcy and Diligence etc (Scotland) Bill: Stage 2

The Deputy Convener: Agenda item 5 is consideration of amendments from section 1 to no further than section 30—part 1—of the Bankruptcy and Diligence etc (Scotland) Bill at stage 2. I welcome to the meeting the minister and his officials, and the members who are not committee members but who are attending because they have lodged amendments—they are Jackie Baillie and Derek Brownlee. I am sure that I saw Mark Ballard somewhere; he, too, will join us.

I remind the ministers' officials that they may not speak during the meeting and committee members that they may not ask officials to answer questions. I presume that all members have with them the groupings of amendments and the marshalled list.

Section 1—Discharge of debtor

The Deputy Convener: Amendment 90, in the name of the minister, is grouped with amendment 106.

Allan Wilson: We start as we mean to go on—in partnership with the committee—in so far as the amendments that we have lodged were instigated by the committee's work. One of the most important reforms in the bill is the reduction of the bankruptcy period from three years to one year. Among other things, that will encourage personal and/or business restart.

The bill includes a power to vary that discharge period. The length of sequestration is a key policy issue that we have discussed in the past and the power to prescribe the period was included in the bill in order to allow ministers to change the law if evaluation showed that one year was too short. However, the Enterprise and Culture Committee and the Subordinate Legislation Committee considered that any change to the bankruptcy period should be made only by primary legislation. I am happy to agree to that and I welcome the chance to put that right. Amendment 90 does that.

Amendment 106 will make further changes to enabling powers in response to concerns that the committee expressed in its stage 1 report. Two enabling powers are made subject to the affirmative procedure rather than the negative procedure—the power to prescribe new events that will stop a debtor's home revesting after three years and first use of the power to prescribe the conditions under which a trust deed becomes protected.

Amendment 106 makes any regulations that are made on the planned new low income, low asset route into bankruptcy subject to the affirmative procedure. Low income, low asset cases will be considered under a later group of amendments; the vote on amendment 106 is not due until after that group has been debated.

I move amendment 90.

Amendment 90 agreed to.

Section 1, as amended, agreed to.

Section 2—Bankruptcy restrictions orders and undertakings

The Deputy Convener: Amendment 32, in the name of the minister, is grouped with amendments 33, 34, 91, 35, 61 to 63, 70 and 71.

15:00

Allan Wilson: The amendments are largely technical—there will be further such amendments as we continue—but I will give a brief explanation of why we have lodged them. I hope that they will be non-controversial.

Section 2 provides for two types of bankruptcy restrictions: bankruptcy restrictions orders, which will be imposed by the courts; and bankruptcy restrictions undertakings, which will be agreed between the debtor and Accountant in Bankruptcy. The amendments are technical and are designed to ensure that the bill takes a uniform approach to the two restrictions.

Section 2 inserts new section 56B of the Bankruptcy (Scotland) Act 1985, which will set out the grounds that a sheriff must take into account in deciding whether to grant an application for a bankruptcy restrictions order. Two of the grounds are that the debtor has made a gratuitous alienation or that he has created an unfair preference. In both cases, a debtor has acted in a way that means that less money is available to pay all or some of the creditors.

As drafted, new section 56B could be taken to cover only alienations or preferences, as set out in sections 34 and 36 of the 1985 act. If so, the sheriff may not be able to take into account some situations in which the debtor has behaved in an unfair way. Amendments 32 and 33 will ensure that common-law alienations and preferences can be taken into account.

It is already an offence for a debtor to obtain credit above the limit set out by law without telling the creditor that they are bankrupt. It therefore needs to be an offence to obtain credit without telling the creditor about a bankruptcy restriction

that is in place. The bill currently states that the debtor will have committed an offence if he fails to disclose to the creditor that he is subject to a bankruptcy restrictions order and is undischarged from sequestration. The creditor does not need to know both those facts, but the debtor commits a crime if he fails to disclose both. We want to fix that anomaly. Amendment 34 will change the requirement so that the debtor must disclose either that he is subject to a bankruptcy restrictions order or that he is undischarged from sequestration.

Amendment 35 has a similar effect to amendment 34. If agreed, it will ensure that a debtor who is subject to a bankruptcy restriction is required to disclose relevant information but nothing more. It will add new section 56GA to the 1985 act, which will ensure that, where a credit restriction is part of a bankruptcy restriction, the debtor must disclose that the undertaking is in place when obtaining credit above the limit set out in section 67 of the 1985 act.

The laws of the different parts of the United Kingdom take account of insolvencies across the country. For example, it is an offence in Scotland to obtain credit without disclosing a bankruptcy in England or Wales. The bill as it stands changes the 1985 act so that a bankruptcy restrictions order that is imposed in England must be disclosed in Scotland, but it makes no mention of bankruptcy restrictions undertakings in England and Wales. Amendments 61 to 63 correct that omission.

Amendments 70 and 71 could be called tidying-up amendments. The bill amends section 17 of the 1985 act, which deals with the recall of sequestration to take account of the effect of bankruptcy restrictions. Amendments 70 and 71 make the bill more consistent with how section 17 takes effect.

Lastly, amendment 91 gives the sheriff a missing power to vary a bankruptcy restrictions order, providing the sheriff with all the powers that he or she would need to deal with a situation in which an order goes further than is needed.

I move amendment 32.

Amendment 32 agreed to.

Amendments 33, 34, 91 and 35 moved—[Allan Wilson]—and agreed to.

Section 2, as amended, agreed to.

Sections 3 to 5 agreed to.

Section 6—Amalgamation of offices of interim trustee and permanent trustee

The Deputy Convener: Amendment 36, in the name of the minister, is grouped with amendments 39 to 47 and 72.

Allan Wilson: Not dissimilar to the previous group, the amendments in group 3 are technical. They are designed to ensure that the bill is consistent in its treatment of the existing office of interim trustee and the new office of trustee in sequestration. They are intended to make the bill work better.

The Bankruptcy (Scotland) Act 1985 gives the Accountant in Bankruptcy the function of supervising the performance of trustees who are involved in a sequestration. The accountant might need to obtain information from a trustee to check that everything is as it should be—or, indeed, that it was as it should have been when the trustee was in office. The 1985 act, as amended, allows the accountant to ask the new trustee in sequestration for any information she needs. However, it is not clear that she can ask for the same information from an interim trustee if one is appointed to safeguard the estate while the court decides whether to grant sequestration. Amendment 36 makes it clear that any interim trustee, if asked, has to provide information whether or not they are still in office.

In some cases, an interim trustee is appointed to safeguard the debtor's estate until the court decides whether to award bankruptcy. On sequestration, the interim trustee may be appointed as trustee in sequestration. If they are not, the court must appoint either another insolvency practitioner or the Accountant in Bankruptcy. New section 13 of the 1985 act provides for the termination of the interim trustee's functions when they are not appointed as trustee in sequestration either because sequestration is refused or because someone else is appointed as trustee in sequestration. New section 13A, as introduced, applies only when an insolvency practitioner replaces an interim trustee. Amendment 39 applies that section to the Accountant in Bankruptcy as well, because that is necessary.

Amendment 40 tightens up the duty of an interim trustee who does not carry on as the trustee in sequestration. The bill states that the former interim trustee may submit his or her accounts to the Accountant in Bankruptcy for audit within three months of the granting or refusal of sequestration. However, the interim trustee should not be able to choose whether to have the accounts audited. The debtor and others with an interest can challenge the accounts only when they are submitted, and any trustee in sequestration might need the information in the accounts to carry out their

functions under the 1985 act. Amendment 40 provides that the interim trustee must submit his or her accounts within three months after they leave office.

Amendment 41 clarifies the duty of the interim trustee when circulating his accounts. The bill states that accounts must be copied to some of the people with an interest but it does not include the new trustee. Amendment 41 rectifies that.

Amendment 42, which is consequential to amendment 41, removes any doubt about which trustee is meant when the bill states that a copy of the accounts must go to the creditors known to the trustee.

Amendments 43 and 44 add a missing reference to the interim trustee, who has an obvious interest in being able to appeal to the courts against either the accountant's determination of their fees awarded or the accountant's decision to refuse them a certificate of discharge.

Amendment 45 gives the sheriff the power to revoke a certificate of discharge that should not have been granted by the Accountant in Bankruptcy. That is needed to complement the existing power to order the accountant to grant a certificate that should not have been refused.

Amendments 46 and 47 will, if they are agreed to, make new section 13D of the 1985 act work as it was intended to. In some cases an interim trustee is appointed to safeguard the debtor's estate until the court decides whether to award sequestration. On sequestration, the interim trustee may or may not be appointed as trustee in sequestration. All that makes the bill more understandable than it would otherwise have been.

Amendment 72 is a small, tidying-up amendment, which requires the trustee to hold any money above a small amount in an interest-bearing account. That duty applies to interim trustees as well.

I move amendment 36.

Amendment 36 agreed to.

Section 6, as amended, agreed to.

Section 7—Repeal of trustee's residence requirement

The Deputy Convener: Amendment 92, in the name of Derek Brownlee, is in a group on its own.

Derek Brownlee (South of Scotland) (Con): First, I remind committee members that my entry in the register of members' interests shows that I am a member of the Institute of Chartered Accountants of Scotland.

Amendment 92 is a relatively simple amendment, which seeks to remove section 7 of the bill, which seeks to remove the requirement that the trustee is resident in Scotland. In the policy memorandum, the Executive said that it viewed section 7 as minor, so it did not consult on it specifically. The committee will be aware that ICAS raised a number of concerns about the potential implications of the change. In its stage 1 report, the committee acknowledged those concerns to an extent and suggested that the Executive discuss them with the UK Government.

My concern is that even if the UK Government were to be persuaded of the concerns that the Executive expressed, the timescale for introducing any legislative change might cause problems. I think that we can find common ground by agreeing that only those who are suitably qualified to act in this area should be practising, which must include their having sufficient knowledge of Scots law in this area. Removing the residency requirement—in the absence of any additional legislative safeguards—might lead to some of the problems that we have witnessed south of the border but which, thankfully, have not been widespread in Scotland.

The proposition is simple. Retaining the residency requirement would in effect introduce an additional safeguard to protect the public from those practitioners who might not be sufficiently aware of the consequences of Scots law and the differences with English law.

I move amendment 92.

The Deputy Convener: Are you suggesting that trustees should be resident in Scotland? Is there no other way of ensuring that they are aware of the detail and consequences of Scots law?

Derek Brownlee: The residency test is a rough proxy for an appreciation of Scots law. It is, of course, entirely conceivable that an insolvency practitioner who is not aware of Scots law might reside in Scotland, but it is unlikely. The converse is that an insolvency practitioner resident in England would not necessarily be aware of the differences between Scots law and English law. The committee report acknowledges that professional regulation is not within the remit of the Parliament. It seems to me that the residency requirement achieves an additional safeguard in most cases, although perhaps not by design. To remove that at a time when the committee is hinting at additional safeguards does not seem to be in the best interests of those who are using the practitioners' services.

Karen Gillon: I have concerns about what is being proposed. I assume that if the residency test was in place, somebody living in Carlisle would not be able to represent somebody who lived in

Gretna, which is a few miles up the road. If that is the case, I would have to oppose amendment 92.

15:15

Allan Wilson: I share some members' concerns. Section 7, as currently constructed, removes the rule that says that trustees in bankruptcies or protected trust deeds must live in Scotland. Amendment 92 seeks to reverse that reform by removing section 7. If the amendment is agreed to, only trustees who lived in Scotland would be able to deal with devolved Scottish insolvencies. Amendment 92 is designed to protect the market of Scottish insolvency practitioners. For example, it would keep out the Carlisle insolvency practitioner, and English and Welsh practitioners more generally, from the remaining part of the market in Scotland.

In this context, insolvency practitioners are Scottish or English only as a result of where they live. They all have a UK qualification, and Scottish insolvency practitioners are allowed to practise in England and Wales if they so choose. If the committee were to agree to the amendment, Scottish practitioners would keep an unfair advantage in the UK insolvency market. It might be argued that shielding Scottish insolvency practitioners from competition would help debtors and creditors in Scotland, but I argue that it would not, for three reasons.

First, any practitioner who is not up to the job will have his or her regulatory body to deal with. It would be no defence to say that they are English and that they do not know the Scottish rules. They have to know the Scottish rules. Secondly, if the practitioner is not up to the mark, the courts can and would remove them from office. Thirdly, insolvency practitioners from elsewhere in the UK are already allowed to administer company insolvencies in Scotland. I have had no report of problems in the liquidation or winding up of limited companies and therefore, if amendment 92 were to be disagreed to, as I hope it will be, I expect no timescale problems in devolved insolvencies.

I believe that Scottish practitioners will respond to projected competition in the way that we expect by offering a better and even more professional service to their clients. Competition in the market will be good for everybody.

A final issue to keep in mind and with which we are all familiar is that the residence requirement could breach European Community rules on the free flow of labour among member states. If amendment 92 is agreed to, the Executive would be at risk of a successful challenge in the courts. We do not want to take that risk and neither do committee members. Therefore, I ask Derek Brownlee to withdraw his amendment.

Derek Brownlee: It is fair to say that as there is no great demand from insolvency practitioners in Carlisle or indeed Berwick-upon-Tweed to break into the Scottish market, the legislation does not need to be changed. Although the minister's point about corporate insolvency is fair, even the professionals who are involved in that area would concede that the law on corporate insolvency is rather more similar north and south of the border than the law on personal insolvency, particularly in relation to property law.

The residency requirement is a rough proxy for ensuring that people have sufficient knowledge of Scots law. It is not perfect, but to remove the requirement at a time when additional safeguards are not in place could lead to some people in Scotland being affected by some of the dubious practices witnessed in England and Wales that, for whatever reason, we have not experienced in Scotland. I press amendment 92.

The Deputy Convener: The question is, that amendment 92 be agreed to. Are we agreed?

Members: No.

The Deputy Convener: There will be a division.

FOR

Fraser, Murdo (Mid Scotland and Fife) (Con)

AGAINST

Baker, Mr Richard (North East Scotland) (Lab)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Gillon, Karen (Clydesdale) (Lab)
Matheson, Michael (Central Scotland) (SNP)
May, Christine (Central Fife) (Lab)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)

ABSTENTIONS

Baird, Shiona (North East Scotland) (Green)

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

Amendment 92 disagreed to.

Section 7 agreed to.

The Deputy Convener: I thank Mr Brownlee for his attendance.

Section 8—Duties of trustee

The Deputy Convener: Amendment 37, in the name of the minister, is grouped with amendments 38, 79 and 83.

Allan Wilson: I will be as brief as I can be. Some of this has been dealt with and, again, the amendments are technical. As I have just said at some length, the bill introduces bankruptcy restrictions orders. The Accountant in Bankruptcy will submit any application for a bankruptcy restrictions order to the sheriff.

Amendment 37 makes it clear that the trustee

must report to the Accountant in Bankruptcy any behaviour by the debtor that gives reasonable grounds for believing that the sheriff would grant a bankruptcy restrictions order. Section 8 amends section 39 of the 1985 act. As introduced, the bill requires the trustee in sequestration to have regard to the financial benefit to the creditors when administering the debtor's estate and that gives the trustee wide discretion to ignore what should be mandatory requirements. Amendment 38 clarifies when the trustee must consult the Accountant in Bankruptcy about the administration of the estate and comply with directions from the accountant, the creditors or the court.

The remaining changes to section 39 of the 1985 act will still help creditors by ensuring that the trustee has proper regard to costs when administering the estate. He or she will be able to use the discretionary powers that are given in section 39 only when they are satisfied that it will be of financial benefit to the creditors. He or she might no longer need to follow the rules on the sale of land that are set down in section 39 of the 1985 act. For example, the 1985 act allows secured creditors to object to the sale of land if the price will be too low to pay them in full. The trustee will now be able to sell the land if that is in the interests of all the creditors. The debtor and the creditors also have the right to appeal against the original trustee obtaining his discharge. The creditors must therefore be notified that an application for discharge has been made.

Amendment 79 adds the creditors to those who are to be notified of an application for discharge.

Amendment 83 is a tidying-up amendment, for which we seek the committee's approval. If a trustee takes control of a debtor's estate when the debtor is running a business, the trustee can continue to run that business. The Bankruptcy (Scotland) Act 1985 does not specify that the trustee can close down a debtor's business, although that can happen. Amendment 83 therefore clarifies that the trustee has that power.

I move amendment 37.

Amendment 37 agreed to.

Amendment 38 moved—[Allan Wilson]—and agreed to.

Section 8, as amended, agreed to.

Section 9 agreed to.

Section 10—Termination of interim trustee's functions

Amendments 39 to 47 moved—[Allan Wilson]—and agreed to.

Section 10, as amended, agreed to.

Section 11 agreed to.

Section 12—Replacement of trustee acting in more than one sequestration

The Deputy Convener: Amendment 48, in the name of the minister, is grouped with amendments 59, 60, 64, 65, 66, 97, 67, 68, 73, 74, 75, 76, 77, 78, 80, 81, 82, 84, 98, 85, 100, 86, 87, 88 and 89. I invite the minister to move amendment 48 and to speak to all the amendments in the group.

Karen Gillon: Briefly. [*Laughter.*]

The Deputy Convener: Members are laughing at me.

Allan Wilson: I will be as brief as I can. All the amendments in the group are minor technical amendments that have been designed to improve the working of the bill.

The bill provides for what will happen when a trustee who acts in more than one sequestration can no longer act and needs to be replaced. Because the proposal in amendment 48 will save both time and money, it will be good for creditors who are affected by transfers. The bill will enable notification of the new trustee to be sent to the sheriff who awarded the sequestration. However, a sequestration will in some cases have been transferred to another sheriff, for example because the debtor has moved to a new area. Amendment 48 makes it clear that notification can be sent to the new court as well as to the old one.

Amendment 59 provides for any notice of abandonment to be registered in the property registers, if it relates to land. Amendment 60 clarifies that the trustee will be responsible for inserting in the sederunt book a certificate of discharge on composition. Amendments 64 to 67 seek to correct terminological and drafting errors. Amendment 68 sets out to clarify that a sequestration will cease to have effect as an inhibition when the Accountant in Bankruptcy refuses to award a sequestration or when a certificate of discharge after composition is recorded in the Register of Inhibitions and Adjudications. Amendment 88 is a consequential amendment.

Amendment 73 aims to remove the need to copy information that has already been sent to the Accountant in Bankruptcy. Amendment 74 will give the trustee more time to tell creditors if a statutory meeting is to be called. Taken together, amendments 75 to 77 will mean that the Accountant in Bankruptcy does not need to report to herself a decision on her part not to call a statutory meeting of creditors—that is an important provision. Amendment 78 seeks to make a small change that will tidy up the bill's language. Amendment 80 is a technical amendment, which is needed to allow amendments 81 and 82 to have

effect.

Section 32 of the Bankruptcy (Scotland) Act 1985 allows an order of the court to require someone who holds property acquired by the debtor during a sequestration to be authority for the release of that property, but the provision does not apply to an order of the Accountant in Bankruptcy. Amendment 81 will fix that. The scheme in section 32 of the 1985 act applies only to property vested at sequestration, but it should apply to acquired property as well. Amendment 82 will fix that.

Amendment 84 makes it clear that the trustee in sequestration can insure any business or property of the debtor. Amendment 85 seeks to correct the wording of section 41A(1)(b) of the 1985 act so that it says "date of the award" of sequestration. A debtor or creditor can lodge an appeal against the determination of a trustee's remuneration up to eight weeks after the end of an accounting period. If the appeal is lodged towards the end of the eight-week period, the trustee may not be aware of it until after the time limit has expired. The amendment will ensure that the trustee will be aware of any appeal by requiring the person who makes it to notify them. Amendment 86 will introduce the same requirement for cases in which the Accountant in Bankruptcy is the trustee.

Amendment 87 seeks to clarify that the reference in section 24(5) of the 1985 act should be to section 7(4), not to section 7(5). Amendment 88 is consequential on amendment 68.

Amendment 89 is a tidying-up amendment, for which we seek the committee's approval. Section 39 of the 1985 act details that the trustee is obliged to consult the commissioners in administering a debtor's estate. If no commissioners are elected, he should consult the Accountant in Bankruptcy. There will be a period between the start of the sequestration and the election of the commissioners during which it will be appropriate for the trustee to consult, and to comply with the directions of, the Accountant in Bankruptcy. The phrase

"if there are no commissioners",

in section 39(1) of the 1985 act, has the opposite effect, so amendment 89 seeks to remove it.

15:30

Currently, creditors are deemed to have agreed to a trust deed's becoming protected if they do not respond to the trustee's circular by objecting to it. The bill changes that. In the future, creditors will have to agree to the trust deed's becoming protected. Amendment 97 will update section 5 of the Bankruptcy (Scotland) Act 1985 to reflect that. Amendment 98 will make a small change to ensure consistency in the language in the bill.

The committee will be pleased to learn that I have come to the last amendment in the group. Amendment 100 will do two things: it will clarify that the trustee can ask the commissioners—or the Accountant in Bankruptcy, if there are no commissioners—to dispense with the need for taxation; and it will tidy up the law that applies when a debtor or creditor lodges an appeal against the determination of a trustee's remuneration, which can be done up to eight weeks after the end of an accounting period, as I mentioned earlier. If the appeal is lodged towards the end of the eight-week period, the trustee may not be aware of it until after the time limit has expired. If the trustee were to pay a dividend to the creditors, insufficient funds may be available to deal with an appeal. By requiring the person who makes the appeal to notify the trustee, we are ensuring that the trustee is aware of the said appeal.

I move amendment 48.

Amendment 48 agreed to.

Section 12, as amended, agreed to.

Section 13 agreed to.

Section 14—Debtor applications

The Deputy Convener: Amendment 101, in the name of the minister, is grouped with amendments 102 and 103.

Allan Wilson: Again, I will be as brief as I can in the circumstances—substantive issues are involved in the amendments to section 14.

The amendments in the group are aimed at helping people who find it hard to get debt relief through bankruptcy. They cannot go bankrupt because no creditor has taken enforcement action against them or agreed to help them to go bankrupt and so are not apparently insolvent. Those people are often called no income, no asset debtors, or NINA debtors. For the purposes of this exercise, I too will call them by that name although, as I have said, it is probably more accurate to call them low income, low asset debtors.

As committee members will recall, on 7 March, I assured you that I would help such debtors by introducing new changes to apparent insolvency at stage 2. Although the amendments in the group deal with the issue that led me to make that promise, they do so not by changing apparent insolvency but by creating a new path into bankruptcy for debtors who are unable to pay their debts. We are enabling them to meet the criteria that are set out in the 1985 act, as amended by

the bill, and the regulations that we are making by way of the enabling power in amendment 103.

For clarity, what we are suggesting is not a new type of debt relief but a way in which NINA debtors who are most in need of debt relief can get it. The end result for them will be that they are sequestrated in the same way that any other debtor is sequestrated. Although they will be freed from their debts, they will be subject to the same restrictions and conditions to which other bankrupts are subject. If they come into money, they will be expected to pay more and, if their conduct is culpable, they could become the subject of a bankruptcy restrictions order. The interests of creditors and the public will be protected—it is right and proper that they should be.

We are not creating a new money advice gateway for NINA cases, which was a recommendation of the working group on debt relief that we established. In the long term, such a gateway for NINA cases may yet offer a good way forward, but first we need to ensure the success of the money advice gateway that is the debt arrangement scheme. The bill will ensure that people who are faced with a creditor-led bankruptcy will get a copy of our debt advice and information package. That will make it easier for people to get help from their local money adviser.

The amendments propose that a NINA debtor who has an income of no more than £100 a week and assets of no more than £1,000 would be covered. Any NINA scheme will obviously exclude some people who are at the margins of eligibility. The figure of £100 is broadly based on the figure for net earnings that are protected from earnings arrestment, which is currently £85. The asset limit of £1,000 is based on the value of a car that can be excepted from attachment. The figures are low, but the amendment is intended to help people who have very little to get back on their feet and, through this process, to get back into the labour market and productive society more generally. We hope that will assist them and the wider economy.

I understand that we need to ensure that, as far as possible, we draw this arbitrary line in the right place. With that in mind, we have provided for the threshold figures to be changed and clarified by the enabling powers that we propose in amendment 103. I intend that the powers that are provided for in amendment 106, which has already been debated, will be subject to the affirmative procedure so that there is a proper debate if and when they are used.

I am happy to listen to any concerns that members may have now or later about the operation of the provisions. It is clear to me that the amendments will help people who need debt relief but cannot get it at present. The proposals will enable them to access debt relief, which is important to such people and to the wider economy. However, we must proceed in a balanced way that protects the interests of both creditors and the wider public. I commend the amendments to the committee.

I move amendment 101.

Murdo Fraser: I have a question for the minister, rather than a comment. I welcome the progress that the Executive has made on the issue. In its stage 1 report, the committee referred to its concern about low income, low asset debtors. It is good that the Executive has responded by lodging amendments.

My slight concern about amendment 103 is that a great deal will be left to regulation. Can the minister say when the committee will be able to see the substance of what the Executive is proposing in more detail, so that we can have a fuller picture of the measures that may be put in place to deal with low income, low asset debtors?

Allan Wilson: Detailed proposals will be available some time next year, probably in the second half of the year.

The Deputy Convener: You referred to the package of debt advice that will be made available to low income, low asset debtors. How will the amendments persuade them to take advantage of that advice?

Allan Wilson: We are talking about people with very low incomes and assets. The varying entitlements to benefits, credits and so on of people in that category can mean that the decision about what route to take in order to remove their debt and put themselves in a better position to return to the labour market, or to make progress with their lives, is finely balanced. Debt information and advice is very important to that category of debtor. It is anticipated that advice on benefits, tax credits and so on will be incorporated into the package, which will make the individuals concerned better placed to work out the best route out of their predicament.

That will be doubly advantageous in that the creditors who are pursuing those individuals will at least have the prospect of getting some return on the credit that they have extended. More important, it will give the people concerned a better opportunity to contribute to the economy and to improve their own lot.

The Deputy Convener: I have a couple of further points that I wish to raise, but I will let Ms Jackie Baillie contribute at this point.

Jackie Baillie (Dumbarton) (Lab): Thank you, convener, for your indulgence in letting me come along and speak to the committee. The Executive amendments on low income, low asset debtors

are very welcome and represent a considerable improvement.

I have a couple of specific points relating to the threshold. I heard what the minister said about the ability to vary it. We have pensioners aged 60 and over who have a minimum income guarantee of £114.05 per week, thanks to the Chancellor of the Exchequer, so one wonders whether the threshold of £100 is too low.

Allan Wilson: I have a raft of statistics that I could share with you. The figure of £100 is arbitrary in the context. There are lower and upper rates for the state pension, personal allowances for income support, income-based jobseekers allowance benefits and so on. We want to work with organisations such as Citizens Advice Scotland, and anybody else who is involved in the area. Anybody who has ever worked in it knows what a minefield it is to balance benefits, tax credits and income more generally, in order to ensure that the individual gets their maximum entitlement. It may well be that some people who fall into the category do so principally because they have not accessed their benefit entitlement.

I suggest that, together with all the stakeholders, we should develop the regulations that are needed to support the process in the widest possible sense to ensure that the interests of the individual are to the fore. That will be a very complex process, as members know, but regulations are not set in stone. They can be adapted to take account of benefits, tax credits and individual circumstances, as well as of the number of people who are liable to be affected by the proposals. We have some figures for that, but they are rough.

Jackie Baillie: That kind of approach will be helpful in developing what I accept is a complex area. With the invitation to work with Citizens Advice Scotland and others, I think that we will end up with the right set of amendments and the right subsequent regulations.

The Deputy Convener: I infer from what you said, minister—I ask you to confirm this—that you are including the working poor in the definition of low income, low asset people, and not just those who are on benefits through unemployment.

Allan Wilson: I am not a fan of the term "working poor", but I accept that some people use it to define that category of person. I take the point. Clearly, it depends what people mean by "the working poor". We want to consider any people who are genuine no income, no asset debtors. If they are working but are still in that category, they will be included.

The Deputy Convener: My final question concerns your proposals for the valuation of assets. Is it your intention to discuss with the advice agencies how the criteria for that will be drawn up and whether that will be a paper-based exercise or something else?

Allan Wilson: I assure you that it is intended to be a paper-based exercise—we have no wish to go down past roads in that context. I can reassure anybody who is concerned about that. It will by definition be an intrusive exercise, but the intrusion will be kept to a minimum.

Amendment 101 agreed to.

Amendment 102 moved—[Allan Wilson]—and agreed to.

15:45

The Deputy Convener: Amendment 49 is grouped with amendments 50 to 52 and 69.

Allan Wilson: Section 14 will take debtor applications out of the courts and hand them to the Accountant in Bankruptcy. The bill makes that change by amending several parts of the Bankruptcy (Scotland) Act 1985. The amendments in this group will make the changes to sections 6 and 9 of the 1985 act work in the way that is intended.

Individual debtors can be sequestrated if they are apparently insolvent, which means that one of their creditors has taken formal action against them to recover a debt due, or the debtor has been made bankrupt in another part of the United Kingdom. Under section 6 of the 1985 act, it is possible for other estates to be sequestrated, including partnerships and other bodies. All those bodies will be able to make a debtor application to the Accountant in Bankruptcy. In the bill as introduced, only partnerships were given the right to apply on the ground of apparent insolvency, but that is inconsistent with the way in which those other bodies are treated. Amendment 49 corrects that inconsistency.

Section 5 of the 1985 act sets out the procedures that apply when natural debtors are being sequestrated. Other sections of that act refer back to section 5 in order to avoid repeating in full any such rules that should apply in other cases. The bill as introduced inserts new subsections into section 5 to cover debtor applications that should have been applied to all such applications. Amendment 50 ensures that the same requirements are included in section 6 of the 1985 act.

At present, sequestration cases are dealt with throughout Scotland. That means that most debtors go to their local court and that no single court has to deal with too much business. Debtor applications will now go to the Accountant in Bankruptcy, but there are several circumstances in which the court may still be asked to step in. As the bill stands, it is possible that those applications

might need to go to Kilmarnock sheriff court, which would not only be inconvenient for some people but potentially might result in a heavy burden for that court. Amendment 51 provides that any applications to the sheriff should continue to be made to the court that has jurisdiction over the debtor's main residence or place of business.

The proposed change under amendment 51 will apply both to applications for recall of sequestration and to appeals against a refusal to award sequestration on a debtor petition. The bill already makes provision for which court should deal with recalls and appeals, but that will no longer be needed if amendment 51 is agreed to. Amendments 52 and 69 are, therefore, consequential on amendment 51.

I move amendment 49.

Amendment 49 agreed to.

Amendments 50 and 51 moved—[Allan Wilson]—and agreed to.

Section 14, as amended, agreed to.

After section 14

Amendment 103 moved—[Allan Wilson]—and agreed to.

Section 15—Sequestration proceedings to be competent only before sheriff

Amendment 52 moved—[Allan Wilson]—and agreed to.

Section 15, as amended, agreed to.

After section 15

The Deputy Convener: Amendment 109, in the name of Karen Gillon, is grouped with amendments 95 and 96.

Karen Gillon: Under current law, a debtor who is being made bankrupt by their creditors has few remedies open to them. To defend an action of sequestration by creditors, a debtor must either pay the debts due or offer security to pay the debts in their entirety. If the debtor can do neither of those things, the court has no discretion and sequestration will be awarded.

That means that, in a creditor-led petition for bankruptcy, a debtor cannot offer to repay the debt over an extended period of time. Similarly, the court cannot be proactive in examining longer-term repayment as a reasonable alternative to bankruptcy. The level at which a creditor can petition for a debtor's bankruptcy is currently £1,500, which means that debtors who owe relatively small sums can be sequestrated.

We heard evidence about the impact of bankruptcy on individuals. We heard considerable evidence that many debtors do not seek to deal with their debts until a particularly late stage in the process, which means that their family or friends are often unable to provide them with the support and help with which they would wish to provide them.

There are two weeks between the petition being lodged and the hearing, which is a short period in which to enable debtors to make alternative arrangements. For example, if a debtor owes a single debt of more than £1,500, they can be sequestrated but are ineligible for a debt arrangement scheme, which requires them to have more than one debt. That can happen even if the debtor has disposable income with which to repay the debt over time.

A debtor might also be asset rich but cash poor and so have no disposable income with which to enter into a debt arrangement scheme. A few weeks' continuation might allow them to release their assets, such as by selling their car, and thus repay the debt.

I welcome the movement that the Executive has made on the matter—which is positive as far as it goes—to allow the sheriff to continue proceedings pending approval of a debt payment programme under the debt arrangement scheme. However, recent research shows that local authorities petitioned for 631 bankruptcies in 2004 and 2,116 bankruptcies in 2005, which indicates the scale of the problem faced by many people, such as those who own their home but have an income of less than £1,100 a month.

I ask members to consider supporting amendment 109, which introduces a test that would apply in certain circumstances and allow continuation for people to release assets or secure support from family and friends. The two-week limit can cause people to approach the more unscrupulous lenders and place themselves in a much worse position.

I welcome the Executive's amendment 96, which allows lay representation in sequestration proceedings. That is welcome, because it means that money advisers or in-court advisers can represent the debtor at the hearing.

I press the Executive to go further at stage 3 and consider how it can allow continuation to happen for the purposes of refinancing people who have some assets that they could release but are unable to release in the existing timescale. I would be grateful if the minister would clarify that if a petition is continued to allow a debtor access to the debt arrangement scheme, once the debt payment programme has been accepted and the case brought back to the court, the petition will then be rejected by the sheriff.

Amendment 109 is, in essence, a probing amendment. I would welcome the minister's reassurance that he will reconsider the matter ahead of stage 3.

I move amendment 109.

Allan Wilson: I am happy to give the assurance that Karen Gillon seeks, but wonder whether stage 3 is the appropriate juncture at which to consider what could in certain contexts be construed as a reasonable proposition.

Amendment 109, which seeks to give the court a general power to continue a petition if it thinks that it is reasonable to do so, is a technically defective means of addressing the matter. For that reason alone, we cannot support it. The power that would be given to the sheriff would be very wide—indeed, it would be too wide. A bankruptcy application could be continued any number of times, for any period and for pretty much any reason. As I have said, I understand why that might be seen as a good thing in certain circumstances, but appearances can be deceptive.

We need to be clear about who would be helped. People who have the ability to pay will get the help that they need under the bill, including under the planned changes in amendments 95 and 96, which deal with the problem that we know about. I will speak to those amendments in a moment.

If amendment 109 was agreed to, people who can but will not pay would be given plenty of scope to delay matters and to prevent creditors from getting the payment to which they were entitled. We need to keep it in mind that bankruptcy is not just about debtors and that creditors have rights, too. A long delay could conceivably give debtors who had assets but who did not wish to pay the opportunity to hide those assets—dare I say it—if they had a mind to do so. A delay in granting sequestration may harm the public by holding up bankruptcy restrictions that are needed. People who cannot pay simply cannot pay. Delaying the bankruptcy would do nothing more than prolong their distress and hold up the debt relief that they would get at the other end of the bankruptcy. The proposals would put more pressure on those debtors and the courts.

Time may show that the courts need a bit more discretion. I have already referred to the debt advice and information package that will be available. As has been pointed out, the Executive amendments in the group will mean that sequestrations can be delayed where doing so is right, and that money advisers can go to courts to assist their clients. We think that that is enough to be going on with.

Amendment 109 is probably more significant than it might superficially appear to be. I will investigate whether stage 3 is the appropriate juncture at which to address issues that have been raised, as I have been asked to do, but changing the whole balance of judgment at the time when a sequestration is granted on a creditor application is not the way to do things.

Executive amendments 95 and 96 are worthy of support. A debtor can apply for a debt payment programme under the Debt Arrangement and Attachment (Scotland) Act 2002. In many cases, at least one of the debtor's creditors will be able to ask the court to bankrupt the debtor. As has been mentioned, it takes a few weeks to put a DAS programme in place. The creditor may decide to ask the court to bankrupt the debtor in that period, but that is not fair to the other creditors, who may be paid less in the bankruptcy, or indeed to the debtor, who could lose a chance to get themselves back on their feet—Karen Gillon asked about that. As things stand, the court cannot refuse to grant a valid creditor application. Therefore, the debtor may be forced into a bankruptcy that could have been avoided. It has been pointed out that that is not right, so amendment 95 will allow the court to continue an application where the debtor can show that he or she will apply for a DAS programme. If the programme is agreed, the application for sequestration will be dismissed.

16:00

As members will know, courts are stressful places, and the debtor may find it difficult to argue their own case effectively. We believe that, if that is the case, they should receive some help. Legal aid is not available—there is nothing that I can do about that in the bill—however, any debtor planning to apply for a DAS programme will have a money adviser. They will be able to build up a strong rapport with their adviser and will feel comfortable discussing money problems with them. The court hearing will be less stressful for the debtor to deal with if such a person is able to speak on their behalf—to advocate for them. They may be able to persuade the court to grant a delay that the debtor would not otherwise have been given. Amendment 96 makes that provision possible where, presently, it is not possible.

For those reasons, I ask the committee to support amendments 95 and 96. They go a long way towards addressing the problems that have been identified by Karen Gillon. We will consider whether stage 3 is the appropriate juncture at which to introduce the changes that are sought and will get back to the committee on that. I ask Karen Gillon to withdraw amendment 109.

Murdo Fraser: I would like to comment on the amendments, if that is in order. I listened with

interest to what Karen Gillon said in moving amendment 109. It is a significant amendment that would make a substantial change to the existing law on sequestration. Although I am not without sympathy for some of the arguments that she put forward, I have reservations about the amendment and echo the concerns that were expressed by the minister.

I have three specific concerns about the wording of amendment 109. First, it would create an additional hurdle for creditors to get over in order to achieve sequestration. I am not sure that such a blunt instrument would be welcome in situations in which the debtor is a won't-pay debtor or the creditor is a local authority that is seeking to recover council tax.

Secondly, by introducing a reasonableness test, we would create a lack of certainty in the system that is not there at the moment. If the choice is between legislation that produces a certain result and legislation that produces an uncertain result, the bias should always be towards creating certainty, especially when the courts are involved.

Thirdly, I share the minister's concern that amendment 109 is not as technically well drafted as it could be. The impact of the amendment would apply not just to personal debtors, but to company debtors, and it would be in order for company debtors to argue in court that sequestration is unreasonable. I do not think that most people would expect to see that protection in the bill.

For those reasons, I am not inclined to support amendment 109. I appreciate the fact that, as Karen Gillon mentioned, it was lodged as a probing amendment.

Both the Executive's amendments are welcome. I particularly welcome amendment 96, which provides for lay representation. That is a major step forward in helping to provide assistance to debtors.

The Deputy Convener: Minister, do you wish to make any response to the points that have been raised?

Allan Wilson: I wish only to point out that it is not just the creditor's interest that would be immediately affected if amendment 109 were to be agreed to; it would also disturb the debtor's interest.

The Deputy Convener: I invite Karen Gillon to wind up the debate and to press or withdraw amendment 109.

Karen Gillon: As I said, amendment 109 is a probing amendment. There are issues around continuation for refinancing that I hope we will be able to explore together ahead of stage 3. I cite as an example a case in which a client had a wage arrestment for council tax arrears, which they were paying. The council stopped the wage arrestment for two months to allow the debt to become more than £1,500 and then petitioned for sequestration. In anybody's mind, that is not reasonable. Given the fact that the person was trying to repay the debt that they owed, that was not the sort of action that we would want to see.

In view of the minister's comments, I seek to withdraw the amendment and look for some positive dialogue between now and stage 3.

Amendment 109, by agreement, withdrawn.

Section 16—Income received by debtor after sequestration

The Deputy Convener: Amendment 53, in the name of the minister, is grouped with amendments 54, 55, 93, 94 and 56 to 58.

Allan Wilson: Section 16 reforms court-based income payment orders to make them more effective and introduces a less formal alternative known as income payment agreements. It makes those changes by amending sections 32 and 55 of the Bankruptcy (Scotland) Act 1985.

The general position is that a bankrupt debtor can keep what they earn; however, that needs to be balanced against the right of the creditors to a fair payment. Amendment 53 makes it clear that a debtor is not entitled to any income that he receives after sequestration that is subject to an income payment order or an income payment agreement.

The Accountant in Bankruptcy has various supervisory functions under the 1985 act, one of which is to maintain the register of insolvencies. The information on the register can be seen by creditors and others who have an interest. However, the bill, as introduced, does not provide for that. Amendments 54 to 57 put that right. They ensure that the accountant has the right function and gets the information that she needs to carry out that function.

An income payment order or income payment agreement can last for up to three years, which means that some of them will be in force after the debtor has been discharged from the sequestration. Section 55 of the 1985 act deals with the effects of a debtor obtaining a discharge from sequestration. One of those effects is that he is no longer liable to pay any debt that existed at the date of sequestration. There are a few exceptions to that, such as court-imposed fines. The bill, as introduced, added income payment orders and income payment agreements to that list, although it did not need to, as orders and agreements stay in force anyway under section 32 of the 1985 act. Amendment 58 fixes that.

The bill, as introduced, is thought to have the effect that breaching either an income payment order or an income payment agreement will be a criminal offence. That is not what we intend, and amendments 93 and 94 fix that. It is one thing to be punished for breaching a court order, but it is quite another to be punished for not complying with a relatively informal agreement with the trustee. If, for any reason, an agreement is not working, the trustee will have to go to court to get an order.

I move amendment 53.

Amendment 53 agreed to.

Amendments 54, 55, 93, 94 and 56 to 58 moved—[Allan Wilson]—and agreed to.

Section 16, as amended, agreed to.

Section 17—Debtor's home and other heritable property

Amendment 59 moved—[Allan Wilson]—and agreed to.

Section 17, as amended, agreed to.

Section 18—Modification of provisions relating to protected trust deeds

The Deputy Convener: Amendment 105, in the name of Jackie Baillie, is grouped with amendment 110.

Jackie Baillie: I am grateful to the committee for giving me the opportunity to speak to amendment 105 and to the convener for supporting it.

Amendment 105 was prompted by concerns that credit unions have raised about the current operation of protected trust deeds. I was first approached by the Vale of Leven Credit Union and Dumbarton Credit Union. Other members have been approached by credit unions in their areas and I know that the cross-party group in the Scottish Parliament on tackling debt has considered the issue.

I understand that the minister has consulted on changes to protected trust deeds and that, if I am right, amendments to the bill will be lodged before stage 3. That is welcome, but the purpose of amendment 105 is to focus our minds on credit unions in the context of the consultation that has come to a close. I do not need to tell members about the valuable role that credit unions play in our communities, which is strongly encouraged by the Executive. Ultimately, credit unions tackle financial exclusion and it would be perverse to continue to disadvantage them through the protected trust deeds process and to place in front of them obstacles that would prevent them from achieving their primary goal.

It is worth noting that there has been a sharp increase in the uptake of protected trust deeds recently. No credit union that I know of is large enough to support the continuous losses that are incurred through the non-recovery of loans that results from protected trust deeds. In effect, the present system lumps together small community-based credit unions with massive creditors such as the Royal Bank of Scotland, HBOS, Visa and MasterCard, all of which are global players that charge much higher fees, never mind much higher interest rates, than credit unions do.

I am told—and have seen evidence to support the anecdotal evidence—that a small minority of trustees charge about £200 an hour to administer a trust deed. Such expenses are paid before the creditors receive a single penny. Although I am sure that the examples that I will provide do not reflect common practice, they are extremely interesting.

For some trust deeds, £200 a month is a legitimate expense for one primary school child's school lunches. Let me demonstrate what an extraordinary amount that is. A school child who lived in West Dunbartonshire would pay £1.40 a day for their school lunch. I am not terribly good at maths, so let us round that up to £1.50 and let us assume that we are talking about a generous month—a five-week month. In my book, 25 times £1.50 comes to £37.50, so one wonders what the extra £162.50 is for. In another example, a trust deed considers expenditure of £100 a month on dog food to be a legitimate cost. It is clear that the dog concerned lives in the lap of luxury.

I understand that those issues all relate to protected trust deeds, but members should be in no doubt that credit unions suffer disproportionately from losses that are incurred through protected trust deeds. Many of them report that if current practice continues unchecked, they will be unable to continue operating. My genuine fear is that the present protected trust deed arrangements run entirely counter to Executive policy and its position of support for credit unions.

A number of suggestions have been made. We have tantalised the minister with various options that he could pursue. Amendment 105 is about making credit unions priority creditors in the eyes of trustees of protected trust deeds, but it is really an invitation to the minister to tell us how he will do things better.

I move amendment 105.

The Deputy Convener: I welcome Mark Ballard to the committee.

Mark Ballard (Lothians) (Green): I share the concerns that Jackie Baillie has so ably raised about the situation that credit unions face. At

present, they are considered to be equal competitors with the likes of HBOS and the Royal Bank of Scotland, but they perform a very different function and are subject to different sets of financial regulation. Credit unions are vital in ensuring that those people who have few options other than loans at the extortionate interest rates that have been discussed have access to financial services.

Amendment 110 emerged from discussions with my local credit union, the Capital Credit Union, which was concerned that student loans are treated in such a way that they are taken out of the reckoning when it comes to bankruptcy. Student loans are a unique financial instrument that is not governed by the same laws as the rest of the financial services industry and they are offered only to students. The Capital Credit Union suggested that similar treatment should be given to credit union loans, which would allow credit unions to offer what is a different service to people who are in danger of bankruptcy or who are already bankrupt. Amendment 110 attempts—in an effort related to that behind amendment 105—to recognise that credit unions are not on the same playing field as the big financial services providers and should therefore be treated differently. The playing field discriminates against credit unions at the moment.

Like Jackie Baillie, I am looking to the minister for ways to deal with the situation better to ensure that the concerns of credit unions such as the Capital Credit Union are recognised and that their unique ability to offer financial services is not undermined by the current operation of the bankruptcy laws.

16:15

The Deputy Convener: I will ask Mark Ballard to move his amendment later; I remind members that this is their opportunity to question Jackie Baillie and Mark Ballard on their amendments.

Murdo Fraser: I would echo much of what Jackie Baillie and Mark Ballard have said about the importance of credit unions and of protecting them in light of the valuable work that they do. However, I have a number of concerns about the wording of the amendments.

There seems to an inconsistency in amendment 105, in that it applies only to protected trust deeds, not to sequestrations. It may well be that Jackie Baillie considered the matter and was not able to devise a way to extend the same protection to sequestrations, but it seems to be an inconsistency that her proposals would apply in only one set of cases.

The amendment also seems to be a fairly major departure in terms of public policy. It seeks to create a unique class of creditor—the credit union—which will be ranked in preference to many other creditors, possibly including involuntary creditors. I am thinking of small charities or people on low incomes, perhaps including the typical elderly widow with a very low income and very little capital, who is owed money. A small business could perhaps be included if it is on the verge of going bankrupt. One could equally see a case for those creditors to be given a protected status above that of the HBOSs and Royal Banks of this world. We must remember that they are involuntary creditors, as opposed to credit unions, which are voluntary creditors. Like other voluntary creditors, credit unions have the opportunity before they lend money to consider the people to whom they will lend it. To reiterate, I think that there is an inconsistency in Jackie Baillie's approach.

As far as Mark Ballard's approach is concerned, I fear that amendment 110 might be technically incompetent. I think that he is trying to amend a piece of United Kingdom legislation, and I am not sure that it is competent to do so in an act of the Scottish Parliament. Perhaps he could address that in winding up.

Having said all that, I do not disagree with the general approach taken by both Jackie Baillie and Mark Ballard in relation to credit unions and I join them in looking forward to hearing from the minister what the Executive's intentions are in trying to ensure that credit unions are not disadvantaged by the bill.

Susan Deacon: I suspect that there is widespread agreement around the table about the importance of credit unions. Many of us have seen at close quarters how their importance and impact have increased over the years. I share the concerns that have been expressed about wishing to ensure that appropriate provision is made for credit unions. Evidently, they are in a different situation from that of the major financial institutions in a whole host of ways.

My concern is about what the appropriate legislative solution is. The problem has been clearly expressed by Jackie Baillie today and has been explored at meetings and briefings facilitated by Jackie Baillie, Christine May and others over recent months. I sense that, because the problem was brought to our attention relatively late in the day, there has been relatively little opportunity for us to consider what the appropriate solution might be.

I want to add a further challenge to that which has already been issued to the minister. As well as telling us what he thinks would be a better solution than what is before us, will he tell us how much time and energy the Executive has spent

discussing the issue directly with the credit unions?

Mr Stone: I am not sure that I agree with Murdo Fraser's analysis of little old ladies versus credit unions. The point is that credit unions go where others do not go. I wish that I had a credit union in my constituency, but I do not, because they are difficult to set up. If the issue of their status is not tackled—not today or even in a few weeks' time, but in a considered way—right-thinking people in constituencies such as mine will be discouraged and further impaired in their efforts to set up credit unions. I echo Susan Deacon's point. If we cannot find out what contact there has been with credit unions in the past, I seek the assurance that there will be discussions to address the point in future. I admit that it is not easy to address it, but it is important to some of our most needy constituents.

Shiona Baird: I echo what the two previous speakers said. The valuable role that credit unions play in addressing the huge level of personal debt needs to be acknowledged. Where possible we have to expand that role and advertise it more widely. I seek the minister's assurance that he will take on board the sentiments of amendments 105 and 110 and lodge something similar at stage 3.

The Deputy Convener: I will invite the minister to comment and respond. Given that we will not get to amendment 110 for a considerable time, I will then ask Mark Ballard to respond to the points that were made about that amendment before I invite Jackie Baillie to respond.

Allan Wilson: I hope that I will be able to provide the relevant assurances that members seek and convince the lodgers of the two amendments that they are not the optimum route to follow if their intention is to help credit unions, as I am sure it is.

As others have said, the amendments are technically defective, so we could not accept them as they are. We then considered whether to accept them in principle and come back later with our own amendments, but I did not think that we could do that either. That is not because I am unsympathetic. As Susan Deacon and others said, there is general agreement in all the parties that credit unions provide a key financial service by promoting financial inclusion and offering access to credit that the more commercial sector does not offer.

The Executive assists credit unions through the credit union assistance fund, by providing local authority rates relief and low-cost loans to purchase and fit out offices and by subsiding start-ups for those offices. It is not that we are unsympathetic. We are happy to be able to help credit unions to make sensible lending decisions. They used to have to pay a fee to search in the register of insolvencies, but the Accountant in Bankruptcy has agreed to waive that fee, so they are no longer charged.

Susan Deacon asked what discussions there have been with credit unions. I have had occasion to meet colleagues in West Dunbartonshire personally, not professionally, so to speak. I have heard Jackie Baillie go on about the example of the dog on a number of occasions and say only that the evidence for that would need to be worked up from an anecdotal basis to a more empirical understanding of the problem—if indeed there is a problem.

Secondly, the measures that are set out in the amendments might not provide the right kind of help. Credit unions can have too much protection; in particular, they need some incentive to lend sensibly in order to protect their members' interests.

As far as Mark Ballard's comparison with student union finances is concerned, I must point out that the two situations are very different. Credit union debts are mostly small and short term and meet immediate need, whereas student loan debts are large, long term and subsidised and, as Murdo Fraser pointed out, do not have a voluntary element. Moreover, they deliver value over a whole lifetime of work.

Most important, any proposal must not harm credit unions. If amendment 110 were agreed to, credit unions would not be eligible to be paid anything in a sequestration. As the only money likely to be available for a long time will vest in the bankruptcy, there is a risk that credit unions will be worse off.

One could argue that credit unions could wait and arrest wages or bank accounts after the sequestration, but how fair would that be to the credit union member in question? After all, debt relief helps the debtor, not the creditor. It is not easy to go bankrupt or to sign a trust deed, and it is important that the debtor is able to start again without having to repay that debt.

Moreover, if the debtor had surplus income, the trustee would apply for an income payment order or agreement, which could last for up to three years. As a result, the debtor would be left with insufficient income to make it worth the credit union's while to attempt to arrest the debtor's wages. A credit union might not even begin to attempt to recover a debt until up to four years after the date of sequestration. One could argue about credit union members' interests in that respect, but I do not think that such an approach would benefit the credit union as a creditor.

Taking up Murdo Fraser's little old lady analogy, I believe that the proposals are unfair to other deserving creditors who might get paid less or not

at all. It would not be fair for credit unions to get paid before employees of a failed business, for example, or other local tradesmen. Credit unions are asking for a preference at a time when other public creditors such as local authorities and the tax office have had to forgo such a preference.

Murdo Fraser wondered why amendment 105 relates simply to trust deed reform. I suspect that that is because introducing preferences into sequestration is a reserved matter, and therefore beyond the Parliament's competence. However, as far as trust deed reform is concerned, I can perhaps offer Jackie Baillie and Mark Ballard some good news. Under the bill, reforms can be made to allow all creditors, including credit unions, to use a protected trust deed to get more of their money back. For a start, they will have more of a say about when a trust deed should be protected and, secondly, the Accountant in Bankruptcy will regulate protected trust deeds to prevent the alleged malpractices by some trustees that can lead to there being little or no dividend. Hopefully, it will be able to address such malpractices, such as the dog food example that Jackie Baillie highlighted.

On several occasions, I have made it clear—I did so publicly during the stage 1 debate and I repeat the offer today—that my officials are happy to meet the credit unions to discuss their concerns and to look at the empirical base for potential reform. They have not yet taken up that offer, but I am sure that they will in the period to come. We can talk about trust deed reform specifically in the context of credit unions, but I do not think that that is the way to go.

16:30

The Deputy Convener: Does Mark Ballard want to respond to what has been said specifically on amendment 110?

Mark Ballard: I recognise that there is a problem with Scottish Parliament legislation amending UK legislation. If that means that amendment 110 is not technically competent, I will not move it. However, I would like to respond to the minister's remarks, particularly regarding the notion that amendments 105 and 110 would encourage credit unions not to take sensible decisions about lending.

The function of a credit union is not to take sensible decisions about lending according to the rules that most financial services providers follow; it lends to those who are poor risks and who have little financial capital. It offers money to those who do not have their own homes to act as a guarantor for a loan. We should be encouraging credit unions specifically because they do not follow the same rules as financial services providers such as HBOS and the Royal Bank of Scotland. Credit unions follow different rules and offer financial services to those who are not sensible risks for other people. That is why they must be treated differently by the law.

We need to ensure that credit unions are protected. However, I recognise that there may be problems with the competence of amendment 110.

Allan Wilson: In my opinion, that view heightens the need for an early meeting with credit unions. An efficiently run and effective credit union would not operate on that basis, or else it would very soon find itself not operating at all. The need for dialogue is emphasised by that comment.

The Deputy Convener: The point is well made. I invite Jackie Baillie to wind up the debate and to press or withdraw amendment 105.

Jackie Baillie: I start with the point that has just been made. It is important to place on record the fact that credit unions take sensible decisions about their lending. They are regulated by the Financial Services Authority. I would finesse Mark Ballard's comment by saying that credit unions are better able to assess risk because they are community based. That is certainly more comfortable territory for me to be in.

Credit unions are unique. They tend to operate in communities where there has been market failure and from which the financial institutions have withdrawn. Because they are set up and registered as industrial and provident societies, they are created by statute and exist in a way that does not quite fit Murdo Fraser's example of the old lady or the small business. They also operate to a common bond, which is essential to the operation of credit unions.

The minister is correct to note that amendment 105 is not inconsistent in dealing only with protected trust deeds but does so because sequestration is a matter that is reserved to Westminster. I had hoped that Murdo Fraser would know that. That is why amendment 105 deals with protected trust deeds, not sequestration. I also recognise that the minister's consultation on protected trust deeds presents us with an opportunity to deal with the issue. I can report to the committee that, when credit unions raised this problem, they did so not in terms of the number of sequestrations that they experienced, but in terms of the increased use of protected trust deeds and the consequential impact on them. We need to be clear about that.

The minister's comments were suitably positive. He is intent on doing the right thing. I will pursue with the convener the meeting with credit unions. On that basis, I seek to withdraw amendment 105 in the hope that I will not have to lodge a further

amendment at stage 3—although, as always, I reserve the right to do so.

Amendment 105, by agreement, withdrawn.

Jackie Baillie: Sorry, convener—I forgot one thing. The tale about the dog food is not anecdotal. I can provide the minister with evidence that the exempted amount is, indeed, £100. What I cannot tell him is whether it is for a Chihuahua or an Alsatian.

Allan Wilson: That flags up another issue about the regulation of insolvency practitioners, which we will address at a future meeting.

The Deputy Convener: I am being remarkably indulgent. It is an important issue and we have given it a good airing. I am grateful to everybody.

Section 18 agreed to.

Section 19—Modification of composition procedure

Amendment 60 moved—[Allan Wilson]—and agreed to.

Section 19, as amended, agreed to.

Sections 20 and 21 agreed to.

Section 22—Modification of offences under section 67 of the 1985 Act

Amendments 61 to 63 moved—[Allan Wilson]—and agreed to.

Section 22, as amended, agreed to.

Section 23 agreed to.

After section 23

Amendment 95 moved—[Allan Wilson]—and agreed to.

Sections 24 to 28 agreed to.

After section 28

Amendment 96 moved—[Allan Wilson]—and agreed to.

Section 29—Treatment of student loans on sequestration

Amendment 64 moved—[Allan Wilson]—and agreed to.

Section 29, as amended, agreed to.

After section 29

Amendment 106 moved—[Allan Wilson]—and agreed to.

Amendment 110 not moved.

Section 30 agreed to.

The Deputy Convener: That concludes the consideration of amendments for today. I thank the members of the committee, members who have attended the committee for today's purposes, the minister and his officials, and those who have sat through the whole debate.

Work Programme

16:38

The Deputy Convener: The final item on our agenda is the committee's work programme, including stage 2 scrutiny of the Scottish Executive's budget for 2007-08. The clerk has produced a paper that sets out the timetable for our work programme and proposes a series of evidence-taking sessions and round-table discussions, including sessions on the sport 21 strategy. I ask the clerk whether there are any points that he wants to make on that.

Stephen Imrie: The main things that the committee asked the clerks to do at the previous meeting were to put together a possible round-table discussion on the employment framework and strategy for those who are not in employment, education or training, and to do likewise for the issues relating to the development of creative Scotland and the issues facing the creative industries in Scotland. We have done those things in annexes B and C to the paper.

The committee also asked the clerks to find out when it was likely that the Executive's review of the sport 21 strategy would be complete. I understand from discussions with Executive officials that that is likely to be in December or January.

On the basis of that information, the committee then invited the clerks to find out what scope remained in the committee's work programme for a short inquiry into or series of round-table discussions on the sport 21 strategy. Our advice to the committee is contained in annex D to the paper. The committee will probably be left with time for no more than two meetings on the sport 21 strategy and one meeting to consider a final report.

The committee asked us to develop a proposal for commissioning research on the benefits of European Union regional development funds. Proposals are being considered and will be brought back to the committee at a later date.

Finally, the committee asked for an update on where we are with the submission of budget information for 2007-08 from the various non-departmental public bodies. An update is provided in annex E to the paper. Submissions from the Scottish Further and Higher Education Funding Council, the Scottish Arts Council and VisitScotland have been received since the paper was written.

The Deputy Convener: Thank you very much. Do members have any comments to make on annexes B and C to paper EC/S2/06/20/3, which deal with proposed round-table discussions? The proposals are indicative at this stage.

Susan Deacon: I want to clarify something about the proposed round-table discussion on the employment framework and the NEET strategy. I am all for a round-table approach, but I am not clear about when and how ministers will be questioned. Ministers are listed as witnesses; would they be around the same table as the other witnesses?

Stephen Imrie: That would be up to the committee. Procedurally, there would be no difficulty in inviting ministers to take part in a round-table discussion. Alternatively, the committee may wish to invite ministers' officials to a round-table discussion and subsequently take separate evidence from the ministers. It is up to the committee to decide the best approach.

Susan Deacon: It is important that we speak to ministers rather than only officials at some point because there has been no opportunity to question them about the strategy since it was published—the parliamentary debate preceded the publication of the strategy. I like the idea of ministers being around the same table as other witnesses, because we ought to be able to discuss that kind of subject in such a way. I would be interested in the views of other members.

Mr Stone: I am attracted to the idea of having a discussion before we see the ministers because some of us may have slightly different points of view on matters. However, if other members disagree, I shall accept their decision.

Shiona Baird: If there were ministers at a round-table discussion, would it be in public?

The Deputy Convener: Yes.

Shiona Baird: That might impede their comments.

Richard Baker: Should we suggest witnesses now or discuss them later?

The Deputy Convener: We can discuss them later.

Michael Matheson: I am probably in favour of having public round-table discussions without a minister being present, simply because I fear that if the minister is present, some witnesses may feel a bit inhibited and will not be as candid as they would like to be. A round-table discussion that the minister would join later may be a way of overcoming that. Some individuals may be put off saying what they want to say if a minister is present. I do not mean anything personal against the ministers, but people may not be as candid as we would like them to be.

I have not yet considered in detail the proposed national register of tartans bill, but we seem to

have allocated a considerable number of days to discussing it. Are we certain that we will require that amount of time to consider it?

16:45

The Deputy Convener: Our examination of the detail of the bill, and perhaps also the result of any consultation, may lead us to agree that it is not necessary for us to allocate that much time to scrutiny of the bill. I am sure that the committee will be delighted if spare time is found in which we can do other things.

Murdo Fraser: I concur with the comments that Jamie Stone and Michael Matheson made on the round-table format. My preference is to have a round table without ministers being present, as that would be more productive. I understand that all the evidence will be given in public and that everything will be in the *Official Report*, but the psychology of the meeting may be such that it would be better if ministerial evidence were to be taken subsequently.

The Deputy Convener: My feeing is quite the converse of Michael Matheson's view. I fear that the poor ministers might feel quite intimidated—it could be open season on ministers. Our dialogue with witnesses would be better if the round table were separate from ministerial evidence taking. At times, there is a wish on the part of ministers to defend robustly when what is needed is open debate. I propose that we pursue the matter on the basis that we see ministers separately. The clerks will come back to us with more information. Is that agreed?

Members *indicated agreement*.

The Deputy Convener: The next matter is the evidence-taking sessions on the sport 21 strategy. Given that we will be into the new year before we have anything on which we can take evidence, I suggest that we leave the proposal on the table for now. Are we agreed?

Members *indicated agreement*.

The Deputy Convener: Finally, I turn to the matter of evidence taking from the national collections. I declare an interest as the chair of the Scottish Libraries and Information Council. I suggest that we take evidence from the National Library of Scotland, which is a huge, major collection with a significant budget. The national library is moving quite quickly from being the guardian of a closed national repository to that of a national resource that is available to all. The national library collections are now available to libraries in our communities and to individuals other than academics.

There would be considerable merit in hearing from our national library. I am not aware that such detailed scrutiny has taken place thus far. The committee would enjoy hearing about the national library's proposals and discussing the ways in which public access and community-based use of the resource could be improved. Are we agreed?

Members *indicated agreement*.

Susan Deacon: I hope that I am not too late to return to the matter of the employment framework, convener. If members have other comments and suggestions to make about potential witnesses, can we make them to the clerks?

The Deputy Convener: Yes. This morning, I met staff members from the Scottish Parliament information centre to discuss further our proposal for a piece of research into the economic impact of European Union funds. SPICe will prepare a paper for the committee.

Mr Stone: Am I allowed to return briefly to annex A, convener?

Michael Matheson: No. Obviously, you were not involved in our earlier discussion.

The Deputy Convener: You can, Jamie. Go on.

Mr Stone: The question is for our clerks. I assume that we will be the lead committee for the proposed national register of tartans bill. Do we really have to spend three days on that?

The Deputy Convener: We have had that debate. Perhaps you were out of the room at the time, Jamie. We agreed that we may not need all that time. Michael Matheson raised the matter.

Mr Stone: My apologies. We were of like mind but in different rooms, Michael.

The Deputy Convener: The committee will have another opportunity to consider its work programme and the need for evidence-taking sessions.

That concludes our business. I thank members for their forbearance, participation and attendance.

Meeting closed at 16:49.

Members who would like a printed copy of the *Official Report* to be forwarded to them should give notice at the Document Supply Centre.

No proofs of the *Official Report* can be supplied. Members who want to suggest corrections for the archive edition should mark them clearly in the daily edition, and send it to the Official Report, Scottish Parliament, Edinburgh EH99 1SP. Suggested corrections in any other form cannot be accepted.

The deadline for corrections to this edition is:

Friday 22 September 2006

PRICES AND SUBSCRIPTION RATES

OFFICIAL REPORT daily editions

Single copies: £5.00
Meetings of the Parliament annual subscriptions: £350.00

The archive edition of the *Official Report* of meetings of the Parliament, written answers and public meetings of committees will be published on CD-ROM.

WRITTEN ANSWERS TO PARLIAMENTARY QUESTIONS weekly compilation

Single copies: £3.75
Annual subscriptions: £150.00

Standing orders will be accepted at Document Supply.

Published in Edinburgh by Astron and available from:

Blackwell's Bookshop
53 South Bridge
Edinburgh EH1 1YS
0131 622 8222

Blackwell's Bookshops:
243-244 High Holborn
London WC1 7DZ
Tel 020 7831 9501

All trade orders for Scottish Parliament documents should be placed through Blackwell's Edinburgh

Blackwell's Scottish Parliament Documentation Helpline may be able to assist with additional information on publications of or about the Scottish Parliament, their availability and cost:

Telephone orders and inquiries
0131 622 8283 or
0131 622 8258

Fax orders
0131 557 8149

E-mail orders
business.edinburgh@blackwell.co.uk

Subscriptions & Standing Orders
business.edinburgh@blackwell.co.uk

RNID Typetalk calls welcome on
18001 0131 348 5412
Textphone 0845 270 0152

sp.info@scottish.parliament.uk

All documents are available on the Scottish Parliament website at:

www.scottish.parliament.uk

Accredited Agents
(see Yellow Pages)

and through good booksellers

Printed in Scotland by Astron