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ECONOMY, ENERGY AND TOURISM COMMITTEE

Wednesday 22 January 2014

Session 4

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ECONOMY, ENERGY AND TOURISM COMMITTEE
2nd Meeting 2014, Session 4

CONVENER

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

DEPUTY CONVENER

Dennis Robertson (Aberdeenshire West) (SNP)

COMMITTEE MEMBERS

*Christian Allard (North East Scotland) (SNP)
*Marco Biagi (Edinburgh Central) (SNP)
*Chic Brodie (South Scotland) (SNP)
*Alison Johnstone (Lothian) (Green)
*Mike MacKenzie (Highlands and Islands) (SNP)
*Hanzala Malik (Glasgow) (Lab)
Margaret McDougall (West Scotland) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Fergus Ewing (Minister for Energy, Enterprise and Tourism)
Jenny Marra (North East Scotland) (Lab) (Committee Substitute)
Joan McAlpine (South Scotland) (SNP) (Committee Substitute)

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

Committee Room 4

Scottish Parliament

Economy, Energy and Tourism Committee

Wednesday 22 January 2014

[The Convener *opened the meeting at 09:33*]

Decision on Taking Business in Private

The Convener (Murdo Fraser): Good morning, ladies and gentlemen, and welcome to the second meeting in 2014 of the Economy, Energy and Tourism Committee. I welcome members, the Minister for Energy, Enterprise and Tourism, his officials and the visitors who have joined us in the gallery.

I remind everyone to turn off—or at least turn to silent—all mobile phones and other electronic devices, please, so that they do not interfere with the committee's work.

We have apologies from Margaret McDougall and Dennis Robertson. I welcome Jenny Marra and Joan McAlpine, who have both joined us as substitutes.

Before the first item of business, I want to thank our committee assistant, Jonas Rae, for all his work. Jonas is leaving us—he is off to the Parliament's events team on a temporary promotion. He is not present—he has left us already—but we thank him formally for all his efforts, including at the recent business in the Parliament conference, the organisation of which he had a lot to do with, and wish him well in his new role.

Agenda item 1 is a decision on taking business in private. Are members content to take item 4 in private?

Members *indicated agreement.*

Bankruptcy and Debt Advice (Scotland) Bill: Stage 2

09:34

The Convener: Agenda item 2 is stage 2 of the Bankruptcy and Debt Advice (Scotland) Bill. I will run through how I intend to deal with amendments.

Everyone should have with them a copy of the bill as introduced, the revised marshalled list of amendments, which was issued yesterday afternoon by the legislation team clerks, and the groupings of amendments paper, which sets out the amendments in the order in which they will be debated.

There will be one debate on each group of amendments. I will call the member who lodged the first amendment in the group to speak to and move that amendment and to speak to all the other amendments in the group. Members who have not lodged amendments in the group but who want to speak should catch my attention in the usual way. If he has not already spoken on the group, I will then invite the minister to contribute to the debate before I move to the winding-up speech. The debate on the group will be concluded by my inviting the member who moved the first amendment in the group to wind up.

Following the debate on each group, I will check whether the member who moved the first amendment in the group wants to press it to a vote or to withdraw it. If they want to press it, I will put the question on that amendment. If a member wants to withdraw their amendment after it has been moved, I will ask whether the committee agrees to their doing so. If any committee member objects, the committee will immediately vote on the amendment. If any member does not want to move their amendment when they are called to do so, they should simply say, "Not moved." Any other MSP present may move the amendment. If no one moves it, I will immediately call the next amendment in the marshalled list.

Only committee members are allowed to vote—that includes members who are in attendance as substitutes today. Voting is by a show of hands, and it is important that members keep their hands clearly raised until the clerks have recorded the vote.

The committee is required to indicate formally that it has considered and agreed to each section and schedule. I will therefore put a question on each at the appropriate point.

I hope that we can complete stage 2 today, as is our intention. If not, we will stop at some point and take it up again next week.

I suggest that, unless anybody has any questions about the process, we should proceed.

Sections 1 to 3 agreed to.

Section 4—Debtor contribution order

The Convener: Amendment 1, in the name of the minister, is grouped with amendments 2 to 7, 9 to 11 and 15.

The Minister for Energy, Enterprise and Tourism (Fergus Ewing): Good morning. For the record, I declare that I am a non-practising member of the Law Society of Scotland and a member of the HI-Scot credit union.

I am pleased that the committee has supported section 3, on "Debtor's contribution: common financial tool". When I gave evidence on 6 November, I said that I looked forward to working with the committee collaboratively. We did that in the stage 1 proceedings, and we should be able to do that in our approach to stage 2.

Amendments have been lodged that respond to various stakeholders' concerns on discharge, transfer of functions from the courts and minimum debt level for the minimal assets procedure. We have lodged amendments in response to concerns that the Scottish Government has picked up on during the bill process, such as those about bank accounts for bankrupts and the adjustment that we are making to allow easier voluntary sequestration by partnerships. We have also lodged amendments that originated with stakeholders, having been proposed by organisations such as the Institute of Chartered Accountants of Scotland and the Law Society of Scotland. Indeed, I have had engagement with some of those bodies since stage 1, and that will continue.

I am pleased that the package of amendments before us does useful things to improve the bill. I am equally pleased with the way in which the package has come together, with different groups, organisations and individuals putting their views forward and having them listened to. The bill is better as a result.

For example, Government amendments 1 to 7, 9, 10 and 15 address points—including those that were made by ICAS during stage 1—that raise questions about the process around DCOs, or debtor contribution orders. As the committee is aware, the principle of ensuring that those who can pay do pay is central to the bill. I hope that all members support that principle and will take the opportunity to reiterate their support today.

The DCO is the mechanism for setting the appropriate contribution as determined by the common financial tool, which members have just voted for. It is important therefore that the process is as simple and straightforward as possible and can be explained to and understood by those who enter bankruptcy.

With that in mind, I highlight the following points on the amendments. Most of the amendments implement a requirement for a DCO to be made in all cases, on initial proposals provided by the trustee. Where an individual has been assessed as unable to make a contribution, that contribution will be set at zero. The requirement to have a DCO in all cases will ensure that debtors are aware of their responsibilities at the outset, and if a debtor's circumstances change during the 48 months, there is a clear and transparent process for varying, either up or down, the contribution level.

Separately, amendments 5 and 10 provide for a process by which a debtor can challenge the DCO directly. That was already available, but the amendments make the process more direct and provide for a review by the Accountant in Bankruptcy and, if necessary, an appeal to the sheriff.

Taken together, these Government amendments improve and clarify the DCO process, and I ask the committee to support them.

I move amendment 1.

Amendment 1 agreed to.

Amendments 2 to 6 moved—[Fergus Ewing]—and agreed to.

The Convener: Amendment 67, in the name of Margaret McDougall, is grouped with amendments 8 and 70. Margaret McDougall is not here. I assume that Jenny Marra will speak to and move amendment 67.

Jenny Marra (North East Scotland) (Lab): Good morning. Amendment 67 seeks to reduce the payment period of the debtor contribution order from 48 months to 36 months or, in other words, to stop the proposed extension of the practical effects of bankruptcy for Scots from three years to four.

I begin by addressing a point that the minister made during stage 1 of the bill in relation to the level of support for that move in the Scottish Government's consultation. As colleagues may remember, that was a major debating point at stage 1. The minister suggested on numerous occasions that

"a majority of respondents supported a repayment period of five years."—[*Official Report*, 18 December 2013; c 25928.]

and that his move to four years was therefore a compromise.

However, to assert that is to take an incomplete look at the minister's consultation. The question to which his assertion refers is question 10.41a,

which asks for how long a new payment product—if there is to be one—should last. Of the people who answered that question, 32 said that they preferred a five-year repayment period, 27 said three years, one said four years and five said that they would prefer another period but—this number is the greatest of those I am reading out—64 are recorded as having not answered the question.

Furthermore, in the consultation analysis of question 10.41a, the Accountant in Bankruptcy, which is the Government's own agency, states clearly that

"The majority of respondents who answered this question felt that this product—

in other words, the extension—"was not required". In fact, the number who supported a new payment product at all was only 38 out of 129, with 70 of 129—a clear majority—preferring the status quo. It is safe to say that a majority of respondents did not favour a five-year repayment period for Scots but instead support the status quo.

The move from three to four years in bankruptcy for Scots has been widely criticised by a number of stakeholders, including Citizens Advice Scotland, which believes that it is very likely to cause hardship, and the Law Society of Scotland—of which the minister is a member—which states:

"There is insufficient evidence that a debtor contribution order for four years will improve returns to creditors."

09:45

As the minister said in his opening remarks, one of his key aims with the bill is to improve returns to creditors. What is more, the extension contravenes the European Commission expert advice that states that repayment periods should range from one to three years and last no longer than three years. Given the weight of evidence, there is no coherent argument for extending the bankruptcy period as the minister has done in the bill, so on that basis I urge members to support amendment 67.

Amendment 70, which seeks to remove section 15, is a logical extension of amendment 67. Section 15 will extend the debtor's liability to four years in two particular circumstances. First, section 15(1) will extend the period for which property or rights acquired or received by the debtor after the date of bankruptcy may transfer to the trustee for the benefit of creditors. Under the bill, such property and rights would fall to the trustee for the benefit of creditors for up to four years from the date of sequestration. Under section 15(2), the same time period will apply to non-vested contingent interests, such as legacies under a will, that the debtor acquires or receives after the date of sequestration. Removal of section 15 would restore the status quo.

Amendment 8 is curious, and I wonder whether it is simply addressing one of what appear to be many drafting errors in the bill. Perhaps I am wrong; perhaps it is making a substantive change. I ask the minister to explain its content in his remarks.

I move amendment 67.

Fergus Ewing: We heard a great deal about the length of the debtor contribution period at stage 1. I will begin by responding to Ms Marra's request to explain amendment 8. This technical amendment seeks to expand section 4 to allow a debtor contribution to be shorter than 48 months in circumstances in which the total debts plus statutory interest can be paid through either contributions or the sale of an asset belonging to the debtor. That will ensure that a debtor is not necessarily bound by the 48-month contribution period where it is not required, and that the trustee can be discharged from office earlier, thereby minimising the chance of unnecessary costs. To put it simply, where the debts can be fully repaid earlier through a combination of the contribution orders and assets, there is no need for the contribution order to extend to 48 months. I hope that all members will understand that fairly obvious and simple scenario. That said, it will be the case in only a very small minority of bankruptcy cases.

In general, the 48-month contribution period—and, indeed, ensuring that those who can pay their debts do so—seems to me to be a very important principle of the bill that I hope that we will all accept. I did not hear Ms Marra say that the Labour Party accepted it, so perhaps in her closing remarks she will indicate whether the Labour Party accepts the principle that in Scotland those who can pay their debts should be required to do so.

I strongly believe that a 48-month minimum contribution period balances the needs and interests of those in debt and their creditors. We heard in the stage 1 debate—and, to a lesser extent, from Ms Marra this morning—claims that the policy would affect, damage, impair and worry the most vulnerable people in our society. That is simply not the case.

People whose sole income derives from benefits will not make a contribution. Currently, two thirds of those who go into bankruptcy do not make a contribution; only one third do. Those two thirds benefit from debt relief, often for substantial debts that they have run up, without making a contribution because they are judged, based on assessment of their income, to be unable both to make a contribution and to meet their commitments to themselves and their families. I

would have thought that all of us could support that system. The claim that was made by Ms Marra in her opening speech in the stage 1 debate and which has been made by many others—that the change will somehow damage the most vulnerable people—is, with all due respect, ill founded.

Another point that must be taken into account when considering the payment period is that, under the bill, the method of calculation that will be used to determine the amount that the debtor will pay will be the common financial statement—our proposed common tool. Members have voted on that and supported it without any debate in today's proceedings, so I presume that they are all satisfied with it. The AIB already uses the common tool in respect of the debt arrangement scheme. In other words, those who enter the debt arrangement scheme are assessed under the common financial statement. Therefore, the proposal in the bill will introduce an element of consistency across DAS, protected trust deeds and bankruptcy.

Consistency is sadly lacking at the moment in respect of contribution orders and the amount that people are required to pay. I will dwell on some of the inconsistencies, anomalies and difficulties that we think the bill will rightly remove, thereby introducing fairness and consistency for, perhaps, the first time.

The AIB's analysis has shown that the common tool uses a method of calculation that leaves individuals and families with the funds that are necessary to pay for their essential household expenditure. That is absolutely critical. I would not support any system that left families unable to pay for essential items of household expenditure. Any claim to the contrary is, I am afraid, simply not borne out by the facts. Calculations using that methodology are less likely to be breached than those that are arrived at using other methodologies, and I welcome the committee's support for the CFS to be adopted throughout Scotland. Without it, the current system is full of inconsistency and potential unfairnesses. That should not continue.

It surely cannot be acceptable for someone to choose a solution because they have been told that they can pay back less by choosing that solution over others, and that the contribution period is shorter. That is happening in the present system. My officials have anecdotal evidence of a company offering to provide a solution for a certain amount each month and of that sum then being undercut by another firm that was seeking the business. Ensuring that there is a standard contribution period and common method of assessment will remove that risk and, combined with compulsory advice, will mean that people will be more likely to end up with a fair assessment of the solution that best addresses their circumstances.

We have also heard claims that a longer contribution period will lead to an increase in breakages, based on what seems largely to be an assumption that, the longer something goes on, the greater the risk that a problem will develop. Again, that is simply not supported by evidence, some of which I will share with the committee.

Our debt arrangement scheme, which supports people in paying back all of what they owe, currently has an average payment length of not three or four years, but 6.5 years. The committee has heard from me before that the rate of revocations in DAS has been stable for a number of years at around 3 per cent per quarter, which is relatively low—despite the fact that it is six and a half years long, not four.

Furthermore, some additional analysis by the Accountant in Bankruptcy of cases that have been revoked has revealed that 75 per cent of current DAS revocations occur during the first two years of the existence of DAS. In other words, most defaults occur early, not late. That is the evidence. It is not the case that the longer the payment period, the more likely it is to fail. In fact, the evidence shows quite the opposite: the AIB's analysis shows that the longer a programme under DAS has been running, the less propensity it has to fail.

We heard not so long ago—after a long debate on protected trust deeds—that the Labour members support a four-year contribution period. I presume that that is still their position and that they have not decided to change that view—although we are not entirely certain about that. If it is the case that they wish a four-year contribution period for protected trust deeds and only a three-year period for bankruptcy, I am sure that ICAS would have something to say about that; it might say that that would induce an unintended incentive for people to enter bankruptcy as opposed to a protected trust deed. To argue for four years of contributions for protected trust deeds—as Ms Marra's colleagues Mr Malik and Ms McDougall have done—seems to be totally at odds with the stance that they have now adopted, which is, to use the word that Ms Marra employed at stage 1, that four years is "iniquitous". If it is iniquitous for bankruptcy, how is it correct and fair for protected trust deeds? Perhaps Ms Marra could answer that later.

All that put together makes a convincing case that the extension in payment will not impact on vulnerable people, because they will not be paying. It is also unlikely significantly to impact on those who can pay, because the evidence suggests that most breakages occur early in

repayment arrangements and not in the later period.

I believe that contributions will be more sustainable, because—this point is extremely important—they will be made by using the CFS. Analysis suggests that sustainable contributions will not automatically lead to an increase in breakages, even over a longer period. Therefore, I urge the committee to reject amendment 67 and its proposal to reduce the period from 48 months to 36 months.

Out of fairness, I should say that I have already debated the consultation responses with Ms Marra. It is plain to me that the support for four years is very substantial, not least from the credit unions, almost of all of which—I think—support four years. The bad debts incurred will be a very significant impediment to the promotion of credit unions, which I think the Labour Party has been keen on. In any event, of those who responded to a particular choice, 32 supported five years, 27 supported three years and 64 expressed no opinion. I do not think that one can really draw too much from that, other than that four years does seem to be a compromise.

I have not mentioned that for individual voluntary arrangements—the broad equivalent insolvency statutory solution to protected trust deeds, that exists in England—the period is five years. The claim that has been made formerly, but which I note was not repeated this morning, that debtors in Scotland will be paying for longer than those in England in statutory debt solutions—that claim was made to a newspaper in a letter, and at stage 1 by Labour members—seems to have been abandoned, and rightly so, because it was never true.

I turn to amendment 70. It is in keeping with the principle that I mentioned a moment ago that section 15 is important. If a debtor acquires property or other assets during the 48-month term, it is fair that creditors receive the benefit of that. The provision of acquirenda—property that is acquired after the date of sequestration—does not include the debtor's income after sequestration; it refers to assets that are acquired after sequestration. I am sure that you will be aware of that, convener, because you are a fellow solicitor. That is dealt with by other provisions in the bill on the contribution after fair allowable expenditure.

The insolvency sector has welcomed section 15 and the standardisation it will bring to ensure that people who are in protected trust deeds and those in bankruptcy are treated equally. Section 15 should therefore be retained.

I will make a final point to address Mr Malik's desire to remove the application fee for people under MAP. If we were to do that, the impact on the taxpayer would be very significant. The committee has accepted the need for the AIB to recover its costs. That approach has seen a significant reduction in the burden on the taxpayer in recent years.

10:00

In 2007-08, the net operating costs that were met by the taxpayer for the Accountant in Bankruptcy were £6.48 million. In 2012-13, they had been reduced—by a factor of 10—to £650,000. It behoves us all to acknowledge that that work represents an extraordinary degree of efficiency and success for the AIB. It is perfectly reasonable for the Labour Party or any member of this Parliament to argue that the taxpayer should resume that additional £6 million liability, but that is not something that has happened in any budget debate that I can recall. Were that to be the position of any member, they would have to say from where that £6 million, or part thereof, would be funded, and which major public services—such as the NHS, police or fire services—would take the hit to increase the subsidy to the Accountant in Bankruptcy's office.

I hope that we can recognise that the Accountant in Bankruptcy has, with her staff, carried out sterling work in performance of the duties that rest upon them. I am extremely conscious of their efficiency and am delighted that that efficiency will lead to their being able to reduce the costs of bankruptcy for those entering it at the lowest process, from £200 under the low-income, low-assets route to £100 in MAP. Halving the fees will be achieved through the further efficiencies that the Accountant in Bankruptcy has been able to identify which she and her staff will deliver in performance of their duties.

In conclusion, I invite the committee to support amendment 8 in my name and to reject amendments 67 and 70 in the name of Margaret McDougall.

The Convener: Thank you, minister. Two members have indicated that they want to speak on this group.

Mike MacKenzie (Highlands and Islands) (SNP): Given the minister's very comprehensive speech, I can add almost nothing but, given that I have sat through all the committee meetings that have dealt with the bill, a few things have occurred to me that Jenny Marra may not be aware of.

First, the committee will be aware that we took evidence informally in private from a number of people who were good enough to share their experiences of going through this process—difficult as that was for them. The committee is grateful to have had the benefit of their evidence. I was left with the overwhelming impression that

most people who went through that difficult process still wished to repay their debts. They were not content with a legal discharge from their debts; at the end of the process, they wanted to be able to hold their head up and say, "I have repaid my debts." I recall distinctly that Mr Malik spoke of a constituent who had a strong feeling that, despite getting into debt through no fault of his own, he wanted to honour his debts. I am convinced that most people want to pay off their debts. When Ms Marra sums up, can she clarify whether it is really Labour's position that people who are able to make a contribution to their debts should make no contribution?

Secondly, the convener will recall that I took a particular interest in the common financial tool. When the committee adviser described it as an algorithm, I challenged that on the basis that I felt that it was quite a simple spreadsheet, which did not meet the definition of an algorithm. I had to apologise to the adviser, because I later discovered that it was in fact an algorithm. Interestingly, when we had a special meeting to look at the mechanism of the common financial tool, I was struck by the fact—I confirm what the minister said—that the lowest 30 per cent of people will make no contribution. The poorest people, who are the people in most difficulty, will make no contribution whatever.

The other virtue and the real merit of the tool is its inherent flexibility. As a Highlands and Islands member, I was concerned about whether it had flexibility to meet the unusual circumstances in which people sometimes find themselves in that region. For example, would it meet the circumstance that I sometimes face of having to use a ferry to get to and from work, or having to keep my own boat if I have to get to work outwith ferry hours? However, I was persuaded that the common financial tool has sufficient flexibility to meet those sometimes unusual circumstances.

Taking that into account, I do not think that the four-year period will inflict any difficulty on people. To reiterate the minister's suggestion, from the committee's previous work on protected trust deeds and the debt arrangement scheme, I am convinced that there is absolutely no good evidence that defaults will increase as a result of extending to a four-year period. All in all, I urge members to reject amendments 67 and 70 but to support the minister's amendment 8, because it is important to retain a bit of flexibility to reduce the period when that is appropriate.

Alison Johnstone (Lothian) (Green): Like Mr MacKenzie, I have heard all the evidence as the bill has progressed to stage 2 but, as far as I am aware, no one has ever suggested that people who can afford to pay their debts should not do so. It is fair to say that a broad spectrum of organisations are against the move in the bill to increase the debtor contribution period. We have heard that the money advice non-governmental organisations, the Law Society of Scotland and creditors are all against that increase. When creditor and debtor organisations oppose the measure, there is clearly an issue. Euan McPherson from Lloyds Bank said:

> "bankruptcy is about wiping the slate clean and 36 months is an adequate payment period."—[*Official Report*, *Economy, Energy and Tourism Committee*, 30 October 2013; c 3488.]

Citizens Advice Scotland, which has massive experience in the area, made it clear that it thinks that the current period of three years is the right one for creditors and debtors.

The minister pointed out that the committee previously supported a period of 48 months in the regulations on the debt arrangement scheme, but those regulations were introduced before we had the chance to take full evidence and, when we did, the issue emerged. We have an opportunity to get the details right in the primary legislation, so we should do so.

Joan McAlpine (South Scotland) (SNP): As a substitute member, I attended some of the evidence sessions on the bill, and I was particularly struck by the evidence of the credit unions, which were supportive of the four-year period. I was struck by their description of some of the situations in which they find themselves in which people do not pay back their debts when they are able to do so. We should not lose sight of the fact that many of the victims are in fact creditors. Constituents of mine who are creditors and small businesspeople are struggling as a result of those who can afford to pay their debts not doing so. Labour says that it supports the credit union movement, so Labour members should think carefully about what the credit unions told the committee and about their support for the four-year period.

Chic Brodie (South Scotland) (SNP): Joan McAlpine has made the point that I was going to make, which is that, in all this, although we are concerned to do the right thing by debtors, we should remember that there are two sides to the situation. I hope that, in the rest of our discussions, we keep in our frame of reference the issue of creditors that Joan McAlpine has just expounded.

Jenny Marra: I will press amendment 67. I will begin my closing remarks by rising to the bait. The minister and Mike MacKenzie invited me to clarify the Labour Party's position on those who can pay—absolutely, we think that those who are in debt should pay as much of their debts as is practically possible. However, the evidence before us shows, and the experts have said, that the

increase in the period from three years to four years will not work for creditors, which addresses Chic Brodie's point. The increase will also be iniquitous—the word that I used at stage 1—for a lot of people who go into bankruptcy.

I am slightly disappointed by the minister's remarks, because I expected a bit of movement on this issue and I did not expect that there would be a need to lodge this amendment at stage 2. I expected the minister to move on the issue between stage 1 and stage 2. I am also disappointed by the quibble on the number of responses to the consultation because, after the stage 1 debate, there was a significant amount of commentary online from experts in bankruptcy, and they agreed with my analysis of the Government's own consultation figures. I can certainly send those remarks to the minister if he is interested. The experts agreed with our analysis of the Government consultation, which concluded that a clear majority of people preferred the status quo. I am disappointed that the minister continues to massage those figures and I do not think that he is being completely genuine with regard to them. I think that a clear majority prefer the status quo on this issue.

I understand what the minister is saying about cost recovery. That argument was deployed when the Government decided to double the fee for the low-income, low-assets route—but I think that we will cover that later. However, I believe and the Labour Party believes that bankruptcy has a role in getting people back into the economy; Government has a role in getting people back into the economy as well. All the expert evidence and the evidence that the committee heard shows that, to get people back into the economy and to get the maximum impact and benefit for creditors as well, the period should be three years rather than four years.

To address Joan McAlpine's point, the Law Society said in its submission that

"there is insufficient evidence that a debtor contribution order for four years will improve returns to creditors".

I completely understand Joan McAlpine and Chic Brodie's point that creditors are often victims as well—I completely agree with that. However, the evidence does not bear out the idea that the extension to four years will improve the situation for creditors. The minister knows that Citizens Advice Scotland is one of the most respected debt advice agencies in the whole country. It is highly respected by Government and highly relied on by our citizens and it opposes that move to four years. The Law Society opposes it. It is also against the European Commission's advice.

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

Members: No.

The Convener: There will be a division.

For

Johnstone, Alison (Lothian) (Green)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)

Against

Allard, Christian (North East Scotland) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)

Abstentions

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

The Convener: The result of the division is: For 3, Against 5, Abstentions 1.

Amendment 67 disagreed to.

Amendments 7 to 11 moved—[Fergus Ewing]—and agreed to.

The Convener: The next group is on the subject of deductions from earnings and other income. Amendment 12, in the name of the minister, is grouped with amendments 12A, 14 and 61.

Fergus Ewing: I hope that this is a group on which we can come to an agreement reasonably easily. Members will recall evidence during stage 1 that highlighted that, under the bill, it was possible to deduct employment income at source but there was no equivalent provision when the debtor was able to pay contributions from other income. Members will also recall recommendation 35 of the committee report, which said:

"The Committee invites the Scottish Government to indicate whether it intends the new provisions to enable sources of income beyond employment, for example, in relation to pension income, rental income or self-employed income to be deducted from a debtor's income."

I am pleased to say that that is precisely what amendments 12 and 14 do: they make provision to secure contributions, where appropriate, from those who are self-employed or who have other sources of income.

Amendment 61 also picks up the Delegated Powers and Law Reform Committee's recommendation that associated delegated powers are made subject to affirmative procedure.

10:15

Amendment 12A, in the name of Jenny Marra, does not disagree with the principle of deductions from unearned income, but rather seeks to extend from two to four the number of payments that can be missed before the trustee can use their order to deduct contributions at source. I will be interested

to hear Jenny Marra's justification for that increase.

In the Scottish Government's view, that is probably an extension too far, and it would give rise to unintended consequences. It would, for example, enable a debtor to miss three payments, make a payment and then miss three payments without the trustee being able to take action.

Our guiding principle is that we want to support those who can pay to pay. We want to encourage the debtor to get in touch quickly with their trustees and discuss any reasons why they might be struggling to manage their payments, and we think that the original two-payment interval, which will usually be monthly, achieves that. It will incentivise the debtor to get in touch with their trustee. Jenny Marra's amendment would mean that there would be less of an incentive, which I think—with respect—would be the wrong approach to take.

I urge members to support amendments 12, 14 and 61, and to reject amendment 12A.

I move amendment 12.

Jenny Marra: Amendment 12A seeks to amend amendment 12 by allowing for four payment intervals to lapse before deductions from earnings can take place. There can be huge implications for a person in bankruptcy whose wages are automatically deducted. For some, it can even mean losing their job, as Citizens Advice Scotland points out in its stage 2 briefing.

For that reason, we believe that such a method of retrieving contributions ought to be a last resort. Extending the interval from two to four payments will help to account for emergency payments that need to be made or for a change in circumstances such as separation from a partner. In such circumstances, a debtor may not necessarily need a payment break but could benefit from a little more leeway in order to adjust to new circumstances or to recoup the money that is used to make an emergency payment.

I move amendment 12A.

Fergus Ewing: I am sorry, convener—I should have drawn members' attention to new section 32F, entitled "Payment break", which is to be inserted in the Bankruptcy (Scotland) Act 1985 under section 4 of the bill. It states that the debtor has the right to apply to seek a payment break "not exceeding 6 months" in the event that there is any change in the debtor's circumstances such as losing a job or illness.

That provision mirrors those in protected trust deeds and the debt arrangement scheme and is perhaps relevant to some of Ms Marra's points in that it provides debtors with a fair and sensible remedy if there were to be some difficulty, tragedy or material change in circumstances in their life.

Jenny Marra: I understand the minister's point, but I wonder whether a two-payment period will be sufficient for such an application to be made. I would be willing to withdraw amendment 12A if the minister can confirm that a payment break of two payment periods will allow sufficient time for an application to be made and approved, and an arrangement to be entered into.

Fergus Ewing: I am happy to write to Ms Marra on that after the committee meeting. The two issues are separate and distinct, although they are related. If the debtor experiences a material change in circumstances that causes them to be unable to pay, there will be provision for them to seek a payment break.

Of course, if there is no change in circumstances and the debtor simply does not pay, after having been assessed at a particular contribution level, it is correct that some type of action can be taken after a period that would normally be two months. That is reasonable, given that the total length of the arrangement is four years.

Jenny Marra: I will press amendment 12A in the meantime, but once I receive a letter from the minister I will perhaps reassess it for stage 3.

The Convener: The question is, that amendment 12A be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Johnstone, Alison (Lothian) (Green)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)

Against

Allard, Christian (North East Scotland) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
McAlpine, Joan (South Scotland) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 12A disagreed to.

The Convener: The question is, that amendment 12 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Allard, Christian (North East Scotland) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)

Johnstone, Alison (Lothian) (Green)
McAlpine, Joan (South Scotland) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)

Abstentions

Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)

The Convener: The result of the division is: For 7, Against 0, Abstentions 2.

Amendment 12 agreed to.

The Convener: We move on to discharge of debtor. Amendment 72, in the name of Jenny Marra, is grouped with amendments 13, 21 to 24, 71, 25 to 30, 75, 31, 39, 78, 55 and 91 to 95.

I point out a number of pre-emptions. If amendment 72 is agreed to, I cannot call amendment 13; amendments 30 and 75 are direct alternatives; and if amendment 39 is agreed to, I cannot call amendment 78.

Jenny Marra: Sorry, convener. Can I clarify that we are talking about group 4?

The Convener: Yes, we are.

Jenny Marra: Thank you. Members will be relieved to hear that I want to keep this as brief as possible because the majority of amendments in the group are technical and consequential. The substantive amendment is amendment 71, and the other amendments in my name are there to support it. Amendment 71 would simply remove section 16 and restore automatic discharge to the bankruptcy process, as is the current practice.

I refer again to expert advice on bankruptcies from the European Commission—[*Interruption*.] Sorry—is there a problem, convener?

The Convener: I was just checking that you were speaking to amendment 72, not amendment 71.

Jenny Marra: You are probably right, convener; there might be an error in my notes.

The European Commission advised that

"discharge should be as automatic and as reasonably limited in time as possible."

There is good reason for such an approach. ICAS warned that the proposals on discharge could have serious unintended consequences. In its briefing, it said:

"The proposals shall not only result in additional time and cost administering the discharge process by the trustee and the resultant lower return to creditors, but it is highly possible that debtors shall not receive their discharge until the end of their contribution period in order that the trustee can make the relevant declaration that the contribution order has been complied with and that the debtor has co-operated with the trustee."

Bankruptcy ought to get people back on their feet as soon as possible. At a time of fragile economic recovery, when businesses are only beginning to see growth return, we must not create laws that penalise failure more than is necessary. For that reason, I urge members to support the substantive amendment and the technical amendments that underpin it.

During stage 1, the minister made a number of concessions, one of which was to alter the proposed process of discharge in response to the committee's concerns. Amendments 21, 26 and 29 and the raft of technical amendments in the minister's name are designed to do just that by removing the need for an application for debtor discharge in cases in which the Accountant in Bankruptcy is not the trustee. Instead, the trustee will be required to file a report to the Accountant in Bankruptcy that sets out whether and how the debtor has met the prescribed discharge criteria. The approach does not reinstate automatic discharge, which is what we would like to happen, but it is a step in the right direction and for that reason we will support the amendments in the minister's name.

I move amendment 72.

Fergus Ewing: Our proposal to put aside automatic discharge for full-administration bankruptcy as opposed to the minimal asset process has been contentious for some people. The Scottish Government's policy has always been clear: the debtor should automatically receive their discharge unless there is evidence that they failed to co-operate with their trustee and comply with their statement of undertaking. Co-operation has a specific meaning in section 64 of the 1985 act, and that is unchanged by the bill.

Our proposal to link a debtor's discharge to the debtor's co-operation was overwhelmingly supported by respondents to our consultation, with 103 out of the 129 stakeholders who responded on the proposal supporting it. However, we perhaps needed to do more thinking about the processes in the bill to express our policy that discharge should proceed automatically unless there is a failure to co-operate. We have done that thinking and I will bring to the committee's attention three things, which I will read into the record for those outside this room who have an interest.

I refer to amendments 21, 13, 22 to 24, 39 and 55. In amendment 21, proposed new section 54(4) of the 1985 act says:

"The trustee must prepare and send a report".

The key word is "must"—that will be automatic. Proposed new section 54(4)(a) says that that must be done

"without delay after the date which is 10 months after the date on which sequestration is awarded".

The trustee will have to prepare and send a report automatically at the 10-month point in every case. Previously, the trustee decided whether to make an application. The process will now be simple—the trustee will report to the Accountant in Bankruptcy automatically in every case at the 10-month point.

On receipt of the report, the Accountant in Bankruptcy will decide whether to award the debtor's discharge. As I have said, we expect that to happen without delay in the significant majority of cases. Amendments 25 to 31 will replicate a similar provision for the procedure when the debtor is subsequently traced.

That is a good example of the Scottish Government taking stakeholders' concerns on board. When the Law Society said that it would

"consider the removal of automatic discharge to be a retrograde step",

it was obvious that we needed to address that. As I have explained, we have produced a process that will mean that the significant majority of debtors should, to all intents and purposes, receive their discharge automatically. We are aware of the problems that arose before the 1985 act was passed, when debtors could remain bankrupt almost indefinitely. The 1985 act ended that situation by bringing in an automatic discharge after three years, which was subsequently reduced to one year.

Jenny Marra's amendments would strike out the changes to the discharge process. As I said, some people have spoken about the process turning the clock back to 1985. We should not do that and I am pleased that Jenny Marra has said that she will support the Government's amendments.

The emphasis on supporting people who can pay to do so means that bankruptcy must not be done to someone; the debtor must play a part in it. Our amendments will deliver that. Overall, they respond to stakeholders' concerns and will improve the process.

Alison Johnstone: The minister has listened to stakeholders and the committee on the issue and has proposed a more streamlined discharge process than was previously proposed. His amendments describe a situation in which trustees must report to the AIB within 10 months. I support that change, but I am still concerned that we are adding administration and complication to a process that already works well. ICAS and Citizens Advice Scotland believe that automatic discharge should be retained, to minimise the bureaucracy that is involved.

As the minister noted, the Law Society told us that the introduction of automatic discharge under the 1985 act was seen as a huge step forward that would stop people ending up in bankruptcy in perpetuity. Measures exist to deal with unco-operative debtors through bankruptcy restrictions orders and the deferral of discharge past the normal sequestration period, if that would benefit the creditor. Those appear to be sensible existing measures to address unco-operative debtors, and I am minded to support retention of the current system of automatic discharge.

The Convener: I have met ICAS to discuss the issue, and it very much welcomes the minister's amendments. However, it remains concerned about the loss of the existing automatic discharge process and is concerned about the additional costs that might arise from the new system, particularly when a debtor is not automatically discharged and challenges that to the AIB and, potentially, in the courts thereafter. It needs to be borne in mind that that will add cost to the process and minimise the return to creditors.

Fergus Ewing: I shall respond to your own remarks, convener, and to those of Alison Johnstone. The intention is that discharge will remain automatic in the vast majority of cases, but there is an onus on the debtor to co-operate. I respect ICAS's views but, in practice, the required report will be a fairly simple document. In sequestration processes, in those cases in which the Accountant in Bankruptcy is not the trustee, the trustees will be insolvency practitioners who are well used to completing forms and reports. They have to complete a number of those forms and reports in the course of the bankruptcy process; I do not think that the bill will significantly add to the burden, and the process will remain automatic. However, the bill will place an increasing onus on the debtor to co-operate in the process, and that was welcomed by the vast majority of people who responded to our consultation. We will continue to work with ICAS to ensure that the procedures are delivered and implemented in the way that is the most efficient and least burdensome and that involves the minimum additional expense, if any.

10:30

The Convener: I invite Jenny Marra to wind up and to indicate whether she will press or withdraw amendment 72.

Jenny Marra: I have no further comments. I will press the amendment.

The Convener: The question is, that amendment 72 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Johnstone, Alison (Lothian) (Green)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)

Against

Allard, Christian (North East Scotland) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
McAlpine, Joan (South Scotland) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 72 disagreed to.

Amendments 13 to 15 moved—[Fergus Ewing]—and agreed to.

Section 4, as amended, agreed to.

Section 5—Debtor application

The Convener: The next group of amendments concerns sequestration and trust deeds where the debtor has few assets. Amendment 68, in the name of Jenny Marra, is grouped with amendments 16, 17, 69, 18 and 58. If amendment 68 is agreed to, amendment 16 is pre-empted.

Jenny Marra: Amendment 68 would remove both the minimum and maximum debt caps for those with few assets seeking to access bankruptcy. It is our belief that a minimal asset route should be available to those with the least amount of assets and income, regardless of the level of debt that they have. Telling someone with no assets and little income that they have too much debt to enter the minimal asset route seems incredibly counterintuitive. The current LILA route has no debt ceiling, and I see no reason to introduce one now.

The bill as it stands will put many more restrictions on the new minimal asset route than are currently in place. In future, the debtor must demonstrate insolvency and that they have received money advice, signed a statement of undertaking and had credit restrictions put in place. Given that the criteria are already tightening, I do not believe that restricting them further by prescribing an arbitrary debt ceiling or floor is necessary.

The minister recognised that implicitly when he listened to the concerns of Citizens Advice Scotland and others, and committed to raising the MAP debt ceiling to £17,000 instead of £10,000. Although we support amendment 16 as an improvement on the Government's original proposal, we must ask: why £17,000 and not £20,000 or £25,000?

Amendment 17 appears to be a clarifying amendment, and amendments 18 and 58 are consequential amendments.

Amendment 69, in the name of Hanzala Malik, reinforces our point about access to the minimal asset route, by removing any fee to enter it. Citizens Advice Scotland has provided consistent and clear advice over the years to show that any fee barrier to accessing bankruptcy for those who have the least is a barrier to accessing the help that they need. I therefore urge members to support amendment 69.

I move amendment 68.

Fergus Ewing: On the increase to the maximum debt level in the minimal asset process, I had thought that the discussion would not be primarily about whether the level should be raised, because I announced during the stage 1 debate that we would raise it from £10,000 to £17,000. I did that because we listened very carefully to what stakeholders, especially Step Change, said. We therefore responded during the stage 1 debate to the committee's recommendation that we look at the matter again.

However, Ms Marra has raised the question of why we chose £17,000. It was a matter of judgment, but that figure was decided after a meeting with stakeholders that I had after the committee's consideration of the bill at stage 1. Incidentally, £17,000 is well above the average debt figure of £14,506 that Step Change quoted.

I hope that we have evinced a response that is characterised by a willingness to listen carefully to these somewhat technical but nonetheless important matters, which Ms Marra has quite reasonably raised. The effect of the measure will extend the criteria to cover 70 per cent of existing low-income, low-assets—or LILA—cases, and I hope that that is the right approach.

Amendment 68 requires a discussion about whether there should be a maximum limit at all. That is a different argument, so I will set out our response as to why it is right that there should be such a limit. The MAP has to have clear, effective, fixed criteria. The criteria for the existing LILA scheme are too loose, which is shown by the large number of transfers out of LILA—cases involving people who enter LILA but who, it emerges, should not have done so. As stated in the financial memorandum that accompanied the bill, in 2012-13 there were 774 transfers out of a total of 3,481 applications. That represents almost a quarter of all LILA cases, and it cannot be right that a quarter of cases have to be redirected or transferred, which involves unnecessary costs.

The important thing is that the MAP cannot be administratively complex to operate. The AIB's records show LILA cases in which the debt levels

were £412,000, £309,000 and £236,000. Plainly, those were not debts that a low-income, low-assets product was designed to cope with, yet those debtors were able to take advantage of the scheme because of the loose criteria.

If we removed the debt ceiling, it is unlikely that we could deliver the MAP for a £100 application fee. Cases would become administratively more complex, which would give rise to additional cost. There is plenty of evidence to show that demand for effective low-cost debt relief is growing as a proportion of overall demand for bankruptcy. Figures announced today show that 49.4 per cent of all debtor applications in the most recent quarter were applications for the LILA route, which is an increase of almost 8 per cent on the same figure last year. There are more LILA cases than there were before—the figure is rising—and it is right that we deal with them as effectively as we can.

Vulnerable low-income, low-assets debtors need a clear, well-signposted, easily understood and efficiently managed solution to their problems. That would be better for them. We should not mix up the MAP and full-administration bankruptcy, in which cases may involve complex assets. As you will appreciate, convener, business assets, heritable property, claims about gratuitous alienation and other matters of that sort do not belong in the MAP/LILA world, so there has to be a method of differentiating between the two that deals with the most vulnerable in the most efficient and simplest way, to make the process as pain free, quick and easy to administer as possible.

Amendments 17, 18 and 58 will make technical adjustments to the bill and the 1985 act to reflect accurately references to property excluded from vesting in the trustee, the MAP limit and the definition of trustees generally.

Hanzala Malik's amendment 69 would prevent the AIB from charging the debtor any fee. As I mentioned in passing, 3,481 debtors entered bankruptcy via the LILA route in the most recent financial year, and each paid a fee of £200. That resulted in £696,200 paid to the AIB. The AIB, as I mentioned, anticipates that the cost of administering a MAP case will be in the region of £100 and that the MAP fee will be set around that figure. If that fee were reduced to zero, as Mr Malik has called for, the costs, projected from the 2012-13 figures, would result in a cost increase to the public purse of £348,100. With the AIB moving towards self-funding, it would be unsustainable to allow access to debt relief without the payment of a fee.

I therefore urge members to support amendments 16 to 18 and 58, and to reject amendments 68 and 69.

Hanzala Malik (Glasgow) (Lab): The MAP route into bankruptcy is meant to help poor people with few assets manage their debt. Although the intention to set the MAP fee at £100, which is half the current cost, is a step in the right direction, my personal opinion is that any fee is a barrier for the poorest in our communities. It has been suggested that savings have been made historically. I cannot see why we cannot make more savings.

In our evidence sessions, victims who had fallen through the system and suffered bankruptcy thought that the fee was a barrier. Citizens Advice Scotland has stated that it agrees with me and that it strongly supports my amendment 69. As members will appreciate, CAS deals with many more bankrupt people than we ever have or will.

I re-emphasise the hardship that families go through during such times. The removal of what is, to many of us, a small fee would be a huge relief to those families. That is why I proposed amendment 69.

Mike MacKenzie: It is worth pointing out something for the benefit of the non-lawyers on the committee, and perhaps it will be useful for me, as a non-lawyer, to try to explain it in layman's terms.

The minister referred to "gratuitous alienation". Basically, that describes a situation in which a debtor tries to sell an asset, perhaps to a friend or an acquaintance, for much less than it is worth. Perhaps there will be a cash or other consideration, but that remains a mystery.

I hope that that is useful to other committee members.

The Convener: I am grateful to you for that instructive lesson in bankruptcy law, Mr MacKenzie, and am very impressed that you have learned so much during the bill process.

If no other member wishes to contribute, I invite Jenny Marra to wind up and indicate whether she wishes to press or withdraw amendment 68.

Jenny Marra: I intend to press amendment 68, convener, but I have one simple question for the minister.

I am very confused about why the minister proposes to halve the LILA fee at this stage, given that I questioned John Swinney in the Justice Committee only a year ago, when he had doubled the fee from £100 to £200. I do not know whether the cost of administering the LILA route has halved in the past year or whether the fee was doubled last year so that the minister could bring it down in the bill. I am confused by what is going on. Will the minister explain the reasons behind that?

The Convener: I am happy for you to respond, minister.

Fergus Ewing: I am happy to respond to Ms Marra; indeed, I was keen to respond to Mr Malik's points—in fairness, the points are very important.

I am absolutely determined that the most vulnerable should not be denied access to statutory solutions. We engage very closely with CAS; indeed, we engaged with it relatively recently to discuss the bill, and we will continue to do so. As Mr Malik said, it deals with a large number of cases.

That being so, it is surprising that no evidence has been presented to us of a denial, impairment or blockage of access to bankruptcy as a result of the imposition of the fee. If such a blockage had happened, we would have expected evidence to have been submitted, but, with great respect to CAS and others for the excellent work that they do to help people in severe debt in Scotland, no such evidence has been forthcoming. I make that absolutely clear.

Ms Marra asked why we are halving the LILA fee from £200 to £100. We are not doing that, so I am afraid that the question is inapt. The LILA fee is £200, and the proposed MAP fee will be no more than £100. They are two different processes, and it is precisely because of that and the Accountant in Bankruptcy's good work in analysing how it will be possible to process cases under the MAP, as opposed to the LILA route, with a greater level of simplicity and efficiency that she has been able to inform the committee that she expects the maximum fee for the new process—not the LILA route, but the MAP—to be £100.

10:45

Ms Marra is correct to say that the cohort of people who enter the MAP will be, broadly speaking, the same as the cohort of people who enter the LILA route. However, I just went over some examples of cases that patently should not have been in the LILA process and which, because of the loose definition, had to leave it, at a cost of some stress and anxiety to the people involved as well as additional administrative expense. I also pointed out that nearly a quarter of the LILA cases had to be transferred. I do not think that one needs a thorough understanding of administrative systems to be able to infer that although the current system has been operating well its operation can be improved.

It is precisely because painstaking, detailed work has been carried out by the AIB that she has been able to conclude that a high level of efficiency will be possible when the MAP is introduced after the bill is enacted. There has also been a great deal of further work and consultation with stakeholders, especially about the operation of the common financial tool, to ensure that the cost of access to the new bankruptcy procedure is appropriate for the most vulnerable.

I hope that that is a reasonable explanation, that the committee will be persuaded that the reasons that I have given are entirely clear, understandable and logical, and that the amendments that I have proposed will be supported.

The Convener: The question is, that amendment 68 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Johnstone, Alison (Lothian) (Green)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)

Against

Allard, Christian (North East Scotland) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
McAlpine, Joan (South Scotland) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 68 disagreed to.

Amendments 16 and 17 moved—[Fergus Ewing]—and agreed to.

Amendment 69 moved—[Hanzala Malik].

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

Members: No.

The Convener: There will be a division.

For

Johnstone, Alison (Lothian) (Green)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)

Against

Allard, Christian (North East Scotland) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
McAlpine, Joan (South Scotland) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 69 disagreed to.

Section 5, as amended, agreed to.

Schedule 1—Schedule A1 to the 1985 Act

Amendment 18 moved—[Fergus Ewing]—and agreed to.

Schedule 1, as amended, agreed to.

Sections 6 and 7 agreed to.

Section 8—Moratorium on diligence

The Convener: The next group is on moratorium on diligence. Amendment 19, in the name of the minister, is the only amendment in the group.

Fergus Ewing: Amendment 19 will amend section 8 of the bill to provide that the moratorium on diligence will not apply to specific diligence procedures if they have reached an advanced stage. The procedures are to option articles that are already attached and notified for auction or have already been removed, or to implement a decree of furthcoming or an order to sell a ship, or a share of a ship, or its cargo. The procedures are allowed under the equivalent procedure in relation to the debt arrangement scheme. I am advised that the procedures are not widely used and therefore that the provision, although it is valuable to ensure consistency and practicality, is unlikely to be cited often. I ask members to support amendment 19.

I move amendment 19.

The Convener: Mike MacKenzie wants to comment on the vexed issue of the sale of ships.

Mike MacKenzie: That is something that might be considered under the LILA process but would not be considered under the MAP process.

Amendment 19 agreed to.

Section 8, as amended, agreed to.

Sections 9 to 12 agreed to.

Before section 13

The Convener: The next group is on debtor's bank accounts. Amendment 20, in the name of the minister, is grouped with amendments 20A, 73, 21A, 74 and 66.

Fergus Ewing: Members will recall that, during stage 1, concerns were raised by stakeholders about the predicament that bankrupt individuals could find themselves in if their bank closed their account when they went bankrupt and they were subsequently unable to find another bank that was willing to let them open an account. We heard that the UK Government has proposed a remedy in its draft deregulation bill and were asked why the Scottish Government could not do something similar. I am pleased to say that the Scottish Government is responding to that, and the Government's amendments in the group make a similar proposal. Although, following formal notice under the new procedure, a trustee's powers to challenge bank transactions will be similar, there will be increased protection for the banks up to that point.

Margaret McDougall has lodged four amendments in the group. Amendment 20A seeks to amend our amendment 20 to require the trustee to provide formal notice to the bank, and would add a requirement to confirm the implications of the discharge for the bank and the debtor. Amendments 21A and 74 propose a new notice requirement for the trustee; on discharge of the debtor, the trustee would have to notify a bank that was notified at the start of the procedure. We do not consider that an addition to the contents of the notice or an extra notice requirement at discharge are either necessary or helpful to the process. Banks are already well aware of the bankruptcy process and the implications of a debtor's discharge from bankruptcy. They deal with bankrupts daily, and the amendments would add a mandatory layer of administration with no apparent benefit to the debtor or other parties. Such matters can be handled by those who are involved without our legislating on the point.

Amendment 73 provides that nothing in the 1985 act will prevent a debtor from holding or applying to open a bank account. Our position on amendment 73 is that, unfortunately, it would have no effect and would confuse the precise requirements of the 1985 act. Even if it had an effect—we do not believe that it could—such an effect would relate to banking, which is a reserved matter.

Accordingly, I urge members to support Scottish Government amendments 20 and 66 and to reject amendments 20A, 73, 21A and 74.

I move amendment 20.

Jenny Marra: Amendment 20A would insert a provision such that, when the trustee notifies the bank of an individual sequestration, the trustee should also confirm the implications of sequestration on the bank and the debtor. The amendment was lodged by Margaret McDougall to provide extra clarity for all parties in the sequestration process on the implications of bankruptcy. The amendment is supported by Citizens Advice Scotland, which raised that as a major issue during stage 1.

Amendments 21A and 74 provide for notification by the trustee or the Accountant in Bankruptcy to the bank when the debtor is discharged from bankruptcy. Because two separate procedures apply, two amendments are necessary. This is a practical tool to help both the bank and the individual to make financial decisions after sequestration.

Amendment 73 seeks to point out that nothing in the Bankruptcy (Scotland) Act 1985 prevented a person whose estate has been sequestrated or

whose estate has been discharged from sequestration from holding or applying to open a bank account. The aim of the amendment is to carry that provision over into the bill and to maintain the status quo.

I move amendment 20A.

Chic Brodie: In my previous life of dealing with companies that were about to go into liquidation and/or owners who were facing bankruptcy, I never came across a situation in which the bank did not fully understand the implications both for itself—as, perhaps, the progenitor of the situation—or for the debtors. I do not understand what amendment 20A would add.

Alison Johnstone: I am pleased that the Government has lodged amendments on bank accounts—after all, there is little point in having a financial health service if people cannot hold a bank account that allows them to do normal everyday things such as pay their energy bills. I understand that the amendments largely mirror what is happening in England and Wales, which reduces the risks to banks, and am happy to support them.

I also thank Jenny Marra for explaining the amendments in Margaret McDougall's name. The requirement to tell banks that have previously been notified that the bankrupt person has been discharged is sensible and should reduce any danger of banks continuing to monitor accounts unnecessarily.

I am also content with amendment 73, which makes it crystal clear that nothing in law is preventing banks from giving these people bank accounts.

The Convener: I, too, appreciate and am encouraged by the fact that the Government has lodged amendments to try to address a serious matter that had been identified in evidence to the committee at stage 1, and on which we are falling behind our colleagues south of the border. I am happy to support them.

Do you wish to wind up, minister?

Fergus Ewing: No.

The Convener: In that case, I ask Jenny Marra to say whether she wishes to press or withdraw amendment 20A.

Jenny Marra: I will press amendment 20A.

The Convener: In that case, the question is that amendment 20A be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Johnstone, Alison (Lothian) (Green)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)

Against

Allard, Christian (North East Scotland) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
McAlpine, Joan (South Scotland) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 20A disagreed to.

Amendment 20 agreed to.

Amendment 73 moved—[Jenny Marra].

The Convener: The question is, that amendment 73 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Johnstone, Alison (Lothian) (Green)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)

Against

Allard, Christian (North East Scotland) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
McAlpine, Joan (South Scotland) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 73 disagreed to.

Sections 13 and 14 agreed to.

Section 15—Vesting of estate after sequestration

Amendment 70 moved—[Jenny Marra].

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

Members: No.

The Convener: There will be a division.

For

Johnstone, Alison (Lothian) (Green)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)

Against

Allard, Christian (North East Scotland) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
McAlpine, Joan (South Scotland) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 70 disagreed to.

Section 15 agreed to.

Section 16—Discharge of debtor

Amendment 21 moved—[Fergus Ewing].

Amendment 21A moved—[Jenny Marra].

The Convener: The question is, that amendment 21A be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Johnstone, Alison (Lothian) (Green)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)

Against

Allard, Christian (North East Scotland) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
McAlpine, Joan (South Scotland) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 21A disagreed to.

Amendment 21 agreed to.

Amendment 74 moved—[Jenny Marra].

The Convener: The question is, that amendment 74 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Johnstone, Alison (Lothian) (Green)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)

Against

Allard, Christian (North East Scotland) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
McAlpine, Joan (South Scotland) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 74 disagreed to.

11:00

Amendments 22 to 24 moved—[Fergus Ewing]—and agreed to.

Amendment 71 moved—[Jenny Marra].

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

Members: No.

The Convener: There will be a division.

For

Johnstone, Alison (Lothian) (Green)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)

Against

Allard, Christian (North East Scotland) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
McAlpine, Joan (South Scotland) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 71 disagreed to.

Section 16, as amended, agreed to.

Section 17 agreed to.

Section 18—Deferral of discharge where debtor cannot be traced

Amendments 25 to 29 moved—[Fergus Ewing]—and agreed to.

The Convener: I remind members that amendments 30 and 75 are direct alternatives.

Amendment 30 moved—[Fergus Ewing]—and agreed to.

Amendment 75 not moved.

Amendment 31 moved—[Fergus Ewing]—and agreed to.

Section 18, as amended, agreed to.

Section 19 agreed to.

11:02

Meeting suspended.

11:07

On resuming—

Section 20—Assets discovered after trustee discharge: appointment of trustee

The Convener: Amendment 32, in the name of Fergus Ewing, is grouped with amendments 76, 33, 77, 40 to 44, 51 to 54, 60 and 62 to 64. Amendments 40 and 43 are pre-empted respectively by amendments 79 and 81 in the group on the removal of interim recall of sequestration.

Fergus Ewing: The 17 amendments are minor and technical. They address points made by the

Delegated Powers and Law Reform Committee, the Scottish Law Commission, the Law Society and ICAS. The amendments will ensure that the legislation reads and has effect accurately.

I move amendment 32.

Amendment 32 agreed to.

Amendments 76, 33 and 77 moved—[Fergus Ewing]—and agreed to.

Section 20, as amended, agreed to.

Section 21—Register of insolvencies

The Convener: The next group is on records. Amendment 34, in the name of the minister, is grouped with amendments 35 to 38.

Fergus Ewing: The amendments deal with the specification of documents that are held in the register of insolvencies. They will remove the provision for the sederunt book to be contained in the register.

The register of insolvencies is a statutory register that holds details of insolvencies of individuals and businesses in Scotland. It is held in electronic format and maintained by the AIB. The bill proposed that the AIB would make available the sederunt book—the file of key documents relating to a bankruptcy—through the register. Having considered further the issues that are associated with that provision, we do not now believe that it is appropriate, mainly because of data protection considerations.

The amendments in the group protect the AIB's duty to make available to interested parties the sederunt book in electronic format, subject to suitable safeguards, and prevent sensitive case information from being published on a public register. I ask for the committee's support.

I move amendment 34.

Amendment 34 agreed to.

Section 21, as amended, agreed to.

Section 22—Sederunt book

Amendments 35 to 38 moved—[Fergus Ewing]—and agreed to.

Section 22, as amended, agreed to.

Schedule 2—Information to be included in the sederunt book

The Convener: I remind members that, if amendment 39 is agreed to, amendment 78 will be pre-empted.

Amendment 39 moved—[Fergus Ewing]—and agreed to.

Schedule 2, as amended, agreed to.

Sections 23 and 24 agreed to.

Section 25—Recall of sequestration by sheriff

The Convener: The next group concerns the removal of interim recall of sequestration. Amendment 79, in the name of Hanzala Malik, is grouped with amendments 80 to 90. I remind members that, if amendments 79 and 81 are agreed to, amendments 40 and 43, which were previously debated in the group on minor and technical provisions, will be pre-empted.

Hanzala Malik: Amendment 79 and the rest of the amendments in the group are probing amendments. I feel that interim recall of sequestration was not adequately discussed in committee, especially as the Law Society of Scotland, of which the minister is a member, and the Institute of Chartered Accountants of Scotland have said that the concept is "fundamentally flawed". Either a person is sequestrated or they are not. I ask the minister to clarify what the purpose of interim recall of bankruptcy is.

I move amendment 79.

Fergus Ewing: I am pleased that the matter has come before us at stage 2, because it offers an additional opportunity to improve the bill. I understand that the amendments that Mr Malik has lodged are supported by the Law Society of Scotland, which circulated drafts to members and my officials last week. I had a useful and positive discussion with Michael Clancy of the Law Society last Tuesday—14 January—and I understand that my officials have had further discussions with colleagues from the Law Society since then. Having had those discussions and taken another look at the provision, the Government sees merit in some of the Law Society's arguments and is in principle content to drop its proposal for an interim recall of sequestration, to respond to Mr Malik's admirably succinct presentation.

There are still some practical operational matters to iron out, such as how the trustees' remuneration is fixed, how we ensure that the AIB has the right information to ensure that debts are paid and issues around the risk that a recall on the sole basis that the debtor has paid all that they owe will be unable to account for late notification of expenses after the debtor has paid but before the trustee has been able to distribute the funds.

Those are all practical but nonetheless important matters that must be considered further. For those reasons, I cannot simply accept Mr Malik's amendments. I ask for the opportunity to take the matter away so that my officials can ensure that the final process meets all the operational requirements and so that we can lodge Scottish Government amendments at stage 3.

To be clear, our proposals will not include an award of interim recall; they will be based on recall once the debt and any expenses to the trustee have been paid. I understand that the Law Society is aware of our proposed approach. I hope that that will be sufficient assurance for Mr Malik and that he will be content not to press amendment 79 and not to move his other amendments, on the basis that we will deliver at stage 3 the change that he seeks.

11:15

Hanzala Malik: I am pleased with the minister's response and the fact that he is undertaking to redraft the provisions. In the circumstances, I am happy to seek to withdraw amendment 79.

Amendment 79, by agreement, withdrawn.

Amendment 40 moved—[Fergus Ewing]—and agreed to.

Section 25, as amended, agreed to.

Section 26—Recall of sequestration by Accountant in Bankruptcy

Amendments 41 and 42 moved—[Fergus Ewing]—and agreed to.

Amendments 80 and 81 not moved.

Amendment 43 moved—[Fergus Ewing]—and agreed to.

Amendments 82 to 90 not moved.

Section 26, as amended, agreed to.

Section 27 agreed to.

Section 28—Replacement of trustee acting in more than one sequestration

Amendment 44 moved—[Fergus Ewing]—and agreed to.

Section 28, as amended, agreed to.

Section 29—Removal of trustee and trustee not acting

The Convener: The next group is on Accountant in Bankruptcy referrals to court. Amendment 45, in the name of the minister, is grouped with amendments 46 and 56.

Fergus Ewing: I recognise that concerns have been expressed about the proposed transfer of certain functions from the sheriff court to the AIB. I remind the committee that there is currently duplication of effort between the courts and the AIB. Our proposals in the bill are designed to minimise duplication and assist with our aims of effective and efficient government. The important point is that the rights of parties can be tested in a court with full jurisdiction when necessary. There are rights of recourse to the courts in relation to all matters.

AIB staff are well placed to deal with the new decision-making functions. The experience that has been built up over the past decade and the AIB's handling of debtor applications for bankruptcy, which were previously a matter for the court, are relevant.

However, I am mindful of the views that were expressed at stage 1 about ensuring that we have the right processes. I am therefore pleased to introduce amendments 45, 46 and 56, which, together with amendment 10—which has already been debated—and amendments 47 to 50, to which I will speak soon, respond to concerns expressed by the Law Society and the Sheriffs Association, among others. What we propose will go some way to addressing the concerns that have been raised.

Amendments 45, 46 and 56 allow the AIB to refer to the sheriff matters relating to the removal of a trustee, the contractual powers of the trustee and the valuation of contingent debts. The power to seek a direction from the sheriff on those matters will ensure that there is no barrier to judicial decision making in complex or legal cases when required. I invite the committee to support the amendments.

I move amendment 45.

The Convener: I have a question about the potential conflict of interest from the Accountant in Bankruptcy reviewing her own decisions. The committee considered that at stage 1 and recommended in paragraph 52 of its report that the Scottish Government should seek the views of organisations including ICAS and R3 on steps that might be appropriate to negate those conflicts of interest. When I met ICAS and R3 yesterday, they told me that they had had no contact from the Scottish Government about a meeting. Will you explain that and perhaps progress that if it has not happened already?

Fergus Ewing: As you know, we engage regularly with ICAS. I admit that I do not recall a specific request from ICAS to discuss the issue, but we will put that right after this meeting. I will write to ICAS to state that, if it wishes to have a meeting with me to discuss the matters, it will be entitled to such a meeting. I am extremely concerned to ensure that all the main stakeholders have open-door access to me, as has been the case. That is right, because we are working together to ensure that the bill provides effective remedies for all the individuals involved.

I will make two points, since you have—reasonably—raised the issue of principle about a conflict of interest. First, ICAS has a range of duties, as does the Law Society. Those duties

might sometimes be perceived by some members to conflict. ICAS has its own supervisory functions—for example, when it is asked to review disciplinary decisions, a review is carried out by an internal committee and not by an independent body. ICAS is not unacquainted with the issue of a conflict of interest, but it resolves that, as do the Law Society and the Accountant in Bankruptcy.

My second point is one of paramount principle. Although the Accountant in Bankruptcy will deal with more matters when an issue is in dispute, in general there will always be a right of appeal to the court. The fundamental point is that, if the debtor is dissatisfied with a decision of the Accountant in Bankruptcy or a position that the AIB has taken, they will have the right that all individuals have to take their dispute to the courts. That is the paramount point, and I instructed my officials to ensure that that paramount principle is embodied and fully expressed in the bill. I am determined to ensure that that is the case. I believe that that is the case, but I am happy to engage with all stakeholders to ensure not only that that is the case but that it is agreed to be the case by everybody else involved.

Amendment 45 agreed to.

Section 29, as amended, agreed to.

Section 30—Contractual powers of trustee

Amendment 46 moved—[Fergus Ewing]—and agreed to.

Section 30, as amended, agreed to.

Section 31—Bankruptcy restrictions order

The Convener: The next group is on bankruptcy restrictions orders. Amendment 47, in the name of the minister, is grouped with amendments 48 to 50.

Fergus Ewing: There was discussion at stage 1 about the various functions that the bill will transfer to the AIB from the sheriff. Responsibility for making bankruptcy restrictions orders is one example. That is not without an element of contention, but I think that we made good arguments as to why it is the right approach in practice.

It is appropriate for the AIB to make decisions about BROs. The AIB has the existing supervisory capacity, not to mention the experience and practical knowledge on the matter of a trustee's statutory duties, which means that the AIB staff are well qualified to gather the appropriate evidence and come to a decision.

The AIB is also an officer of the court and has been making decisions on matters previously dealt with by the courts for some time. In 2008, the Bankruptcy and Diligence etc (Scotland) Act 2007 made significant changes to transfer debtor petitions from the courts to the AIB, which I think has been a success.

The making of a BRO is subject to appeal to the courts, as I opined a moment ago. On that front, the Scottish Government is mindful of the committee's view and stakeholder feedback that the legislation must provide a fair and just process, which must be, and must be seen to be, at the core of the decision-making process.

The amendments in the group will restore the ability of a debtor who is affected by a BRO to challenge the AIB's imposition of the BRO at any time during the period for which the BRO is imposed—and that can be appealed to the sheriff. That will be subject to the ability of the sheriff only to limit the time when such a challenge may be brought, to avoid abuse of process. In addition, the amendments will remove duplication in the procedures, which was a matter that stakeholders also raised.

I urge members to support the Scottish Government amendments.

I move amendment 47.

Amendment 47 agreed to.

Amendments 48 to 50 moved—[Fergus Ewing]—and agreed to.

Section 31, as amended, agreed to.

Section 32 agreed to.

Section 33—Power to cure defects in procedure

Amendments 51 to 54 moved—[Fergus Ewing]—and agreed to.

Section 33, as amended, agreed to.

Section 34—Regulations: applications to Accountant in Bankruptcy etc

Amendment 55 moved—[Fergus Ewing]—and agreed to.

Section 34, as amended, agreed to.

Section 35—Valuation of debts depending on contingency

Amendment 56 moved—[Fergus Ewing]—and agreed to.

Section 35, as amended, agreed to.

Sections 36 to 45 agreed to.

Section 46—Effect of discharge of debtor

Amendment 91 not moved.

Section 46 agreed to.

Sections 47 and 48 agreed to.

After section 48

The Convener: The next group is on debt arrangement schemes: extension to non-natural persons and procedures. Amendment 57, in the name of the minister, is grouped with amendment 65.

11:30

Fergus Ewing: Committee members will be aware of the success of the debt arrangement scheme, which supports individuals and couples to pay back their debts in full over a longer period of time. As part of our plans for a financial national health service, we propose that DAS should be available to a wider group—specifically to business partnerships, where those are non-limited liability partnerships. Mike MacKenzie has raised that issue with me on several occasions.

Amendment 57 puts in place powers that are required to allow regulations to be laid later this year in respect of a business DAS solution. Those include clearer provisions to allow controls on the remuneration of money advisers who are acting in relation to DAS. Amendment 65 puts in place a provision that requires the affirmative procedure to be used in relation to those new powers.

Until our 2011 changes to DAS, the scheme was available exclusively through money advisers in the third sector who did not charge for their services. One of the main aims of the 2011 regulations was to widen access to DAS, thereby ensuring that those who wanted to access the scheme could do so through an approved money adviser.

We took the decision to allow qualified insolvency practitioners to offer DAS as well as offering insolvency solutions. DAS has grown significantly as a result of that decision, but new challenges have emerged. Although the scheme itself is free to access, some insolvency practitioners are charging significant fees for their advice in respect of DAS and for the on-going management of the debt payment programme. I know of one case in which fees of at least £3,000 have been charged for advice, which is hard to justify. Amendment 57 will support consideration of arrangements for fees at a later date.

Amendment 65 also implements the Delegated Powers and Law Reform Committee's recommendation on the requirement for regulations that specify the common financial tool for the purposes of DAS to be subject to affirmative procedure, which is in line with the procedure for those regulations under the 1985 act.

I therefore ask the committee to support amendments 57 and 65.

I move amendment 57.

The Convener: Minister, I seek some clarity on one point. I appreciate your clarification that the provision will apply to business partnerships, but will any other non-natural persons be caught by the measure? When I hear the words "non-natural persons", I imagine robots or androids, but I am sure that that is not what you are referring to.

Fergus Ewing: As they say in the US courts—at least on television—we will take that under advisement. I think that it would be sensible to write to the committee on that matter. The intention is to extend DAS and make it available to anyone who may benefit from it. Non-limited liability business partnerships are an obvious extension, which will have a practical effect, but we will look carefully at your very sensible—albeit somewhat technical—point, convener, and write to you in due course.

The Convener: Thank you—I would appreciate that.

Amendment 57 agreed to.

Sections 49 to 51 agreed to.

Schedule 3—Minor and consequential amendments

Amendment 58 moved—[Fergus Ewing]—and agreed to.

The Convener: The next group is on voluntary sequestration for partnerships. Amendment 59, in the name of the minister, is the only amendment in the group.

Fergus Ewing: We are now on the home stretch, and the finishing line is in sight. Amendment 59 is a minor amendment, but it is helpful. It has been proposed by a former insolvency practitioner and has been supported by ICAS and R3, the insolvency trade body.

The amendment relates to the process by which a partnership can apply for sequestration. Currently, partnerships can apply for bankruptcy of the partnership if they have the concurrence of a qualified creditor. That is at odds with the position of sole trader companies, which can apply for bankruptcy without the support of creditors. Amendment 59 will ensure that debt relief is available to partnerships without placing an additional burden on them to secure the support of creditors.

I move amendment 59.

Amendment 59 agreed to.

Amendments 92 to 94 not moved.

Amendment 60 moved—[Fergus Ewing]—and agreed to.

Amendment 95 not moved.

Amendments 61 to 65 moved—[Fergus Ewing]—and agreed to.

Schedule 3, as amended, agreed to.

Schedule 4—Repeals

Amendment 66 moved—[Fergus Ewing]—and agreed to.

Schedule 4, as amended, agreed to.

Sections 52 and 53 agreed to.

Long title agreed to.

The Convener: That concludes stage 2 of the Bankruptcy and Debt Advice (Scotland) Bill. I am grateful to members for their assistance and to the minister and his officials for coming along. Members should note that the bill will now be reprinted as amended and will be available in print and on the Parliament website tomorrow morning.

The Parliament has not yet determined when stage 3 will take place, but members can now lodge stage 3 amendments at any time with the legislation team clerks. Members will be informed of the deadline for amendments once it has been determined.

11:37

Meeting suspended.

11:44

On resuming—

Public Bodies Act Consent Memorandum

Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading's Functions in relation to Estate Agents etc) Order 2014 [Draft]

The Convener: Item 3 is consideration of a Public Bodies Act 2011 consent memorandum in relation to the Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading's Functions in relation to Estate Agents etc) Order 2014.

As members might be aware, the background to this is the abolition of the National Consumer Council, whose functions will be transferred to the citizens advice service south of the border and in Scotland. Also, some functions that are currently exercised by the OFT will be transferred to Citizens Advice Scotland from 1 April 2014.

The issue seems reasonably straightforward. We have had a letter from Citizens Advice Scotland, which welcomes the draft motion and asks us to support it. I am happy to hear from members if you want to raise issues or make comment; if not, I take it that there is general assent. Does the committee agree to recommend to the Parliament that the forthcoming motion be approved?

Members *indicated agreement.*

The Convener: Are members happy to leave to the convener and clerk the drafting and publication of a short factual report, which will set out the committee's deliberations and decisions?

Members *indicated agreement.*

11:46

Meeting continued in private until 12:05.

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

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