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Official Report

MEETING OF THE PARLIAMENT

Thursday 10 December 2015

Session 4

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Scottish Parliament

Thursday 10 December 2015

[The Presiding Officer opened the meeting at 11:40]

General Question Time

The Presiding Officer (Tricia Marwick): Good morning. We come first to general question time.

Planning (Countryside Housing)

1. Rob Gibson (Caithness, Sutherland and Ross) (SNP): To ask the Scottish Government whether planning regulations can be adapted to allow more housing in the countryside. (S4O-04924)

The Cabinet Secretary for Social Justice, Communities and Pensioners' Rights (Alex Neil): Scottish planning policy requires that development plans make provision for rural housing in accordance with the spatial strategy for the area. Policies can be adapted to suit local needs and circumstances.

Rob Gibson: The stage 1 report on the Land Reform (Scotland) Bill shows that social rural housing is needed across Scotland. Planners have been allowed to group houses in village envelopes to make utilities easier to supply. However, the real need is for houses for tenant farmers and crofters, to allow agriculturalists to retire on the spot, in the places where they live and work. Will the Scottish Government ensure that planning meets real needs, not those of planning theories that are unsuited to much of Scotland?

Alex Neil: I have a great deal of sympathy with the member's point. Our view is absolutely that planning authorities should accommodate people's needs, as he said. I hope that the independent planning review that is being undertaken will address in its report, which is due early in the new year, the matter that he raised.

Cameron Buchanan (Lothian) (Con): It is true that we need more housing, but to make that happen we need to ensure that planning regulations are not overzealous. What analysis has the Scottish Government done of planning systems elsewhere that take less time to make decisions?

Alex Neil: We always look for best practice through our own offices as well as through the professional bodies that represent the planning industry in Scotland. One aspect of the independent planning review's work will be to receive evidence on where things work better elsewhere and what we can learn from other

regimes. We have never taken the view that we get everything absolutely right in Scotland; we can always learn from other people. That applies to planning as much as it does to other aspects of policy.

NHS Ayrshire and Arran (Out-of-hours Services)

2. John Scott (Ayr) (Con): To ask the Scottish Government when it last met NHS Ayrshire and Arran to discuss primary care out-of-hours services. (S4O-04925)

The Cabinet Secretary for Health, Wellbeing and Sport (Shona Robison): The report of the findings and recommendations of the national review of primary care out-of-hours services was published on Monday 30 November. The purpose of the review was to ensure that out-of-hours services were patient centred, safe and sustainable, as part of our wider reforms of primary care. NHS Ayrshire and Arran representatives contributed to the review, and the review chair and review team from the Scottish Government visited NHS Ayrshire and Arran on 26 June this year as part of the review's national engagement programme. Officials will continue to be in contact with NHS Ayrshire and Arran as we move into implementation of the review's recommendations, and I recently met the board's chair and chief executive.

John Scott: The cabinet secretary will be aware that a significant number of general practitioners in Ayrshire are approaching retirement age. She will also be aware of the difficulty in recruiting young doctors to become GPs in Ayrshire, particularly in rural areas. It was recently suggested that there is university bias against such a career path, which is not helping the situation. Given the likely lack of GP availability for those and other reasons, how does the cabinet secretary see a doctor-led, out-of-hours-service being delivered in Ayrshire in the future?

Shona Robison: Of course the member will be aware that Sir Lewis Ritchie dealt with all those pertinent matters in his very good report. He pointed the way to what is essentially a multidisciplinary team solution in not just Ayrshire and Arran but across Scotland, with a focus on urgent care resource hubs, where urgent care is co-ordinated from one place. That is for the out-of-hours context, but it has an in-hours application as well.

I am sure that the member will also be aware of the nurse-led pilot in Ayrshire. I can tell him that 2,500 patients were referred to the Ayrshire out-of-hours service, half of whom were referred to advanced nurse practitioners. The role of the GP within the multidisciplinary teams will be as the supporting clinical expert. The feedback from the

Ayrshire pilot is very positive indeed, and I think that it leads the way in showing how a multidisciplinary team can work to bolster and improve out-of-hours services.

Kenneth Gibson (Cunninghame North) (SNP): The pilot is excellent and we all commend the work that is being done, but demand and pressures on the health service are increasing all the time. Can the cabinet secretary tell the Parliament how many more patients are being treated annually by primary care out-of-hours services in NHS Ayrshire and Arran compared with when the SNP came to office in 2007?

Shona Robison: The number of patients being treated across the whole of the NHS has continued to increase, and out-of-hours services are no exception to that. I will write to the member with the patient numbers for Ayrshire and Arran.

We need to ensure the sustainability of out-of-hours services going forward. The report from Sir Lewis Ritchie is therefore very timely and pertinent because it shows that, with the right workforce model and multidisciplinary team, we can provide robust out-of-hours services to what will be a growing number of patients. Also, if we get that right, we can avoid patients going to other parts of the health system, which is something that we want to do.

The Presiding Officer: I call Richard Simpson. I point out that the question is about NHS Ayrshire and Arran and primary care.

Dr Richard Simpson (Mid Scotland and Fife) (Lab): I welcome the cabinet secretary's responses and Sir Lewis Ritchie's report, which is critical to care in Ayrshire and Arran and elsewhere. However, in the meantime, while we are setting up new pilots on the Sir Lewis Ritchie model, one of which will be in Ayrshire and Arran, I ask her to take a look at the problems that are occurring in Ayrshire and Arran and in other areas, such as Lanarkshire and Tayside, in relation to the transport of patients to the more limited number of out-of-hours centres.

Shona Robison: We will have a debate on primary care next week and we will be able to explore the issues in more detail then. While the roll-out of the report's recommendations is happening and as we move towards a different model of delivery of out-of-hours services, we will require boards to maintain a robust and sustainable set of out-of-hours arrangements. I am happy to ensure that Richard Simpson gets an update on the transport issue in advance of the debate next week.

Road Haulage (Driver Shortages)

3. Angus MacDonald (Falkirk East) (SNP): To ask the Scottish Government what recent

discussions it has had with the road haulage industry regarding reported driver shortages. (S4O-04926)

The Minister for Transport and Islands (Derek Mackay): The Cabinet Secretary for Fair Work, Skills and Training met the Scottish road haulage group to discuss the matter in March, and that was followed by a meeting with officials in June. My officials have met Lantra and the Road Haulage Association in the past two months.

Skills Development Scotland has been working with road freight industry partners on the development of an invitation to quote for research that is aimed at gathering evidence on the scale of the shortage in Scotland. The invitation to quote for that work, which is expected to issue shortly, will inform the development of a skills investment plan for the industry.

I encourage employers to consider the potential to recruit into the haulage industry former members of the armed forces, many of whom will have received industry-relevant training and experience that could give them a head start on securing the civilian qualifications that they need.

Angus MacDonald: I welcome the action that Skills Development Scotland has taken to date. Is the minister willing to discuss with the Cabinet Secretary for Fair Work, Skills and Training the possibility of working in partnership with haulage firms to share the costs of training new drivers, not just in the general haulage sector but in the specialised livestock haulage sector, where there is a specific shortage?

Derek Mackay: Yes. I am happy to initiate those discussions and report back to Mr MacDonald.

The Presiding Officer: Questions 4 and 5 have not been lodged. In both cases, the members have provided an explanation.

Preventative Care (Self-help)

6. Rhoda Grant (Highlands and Islands) (Lab): To ask the Scottish Government what action it is taking to promote self-help as a form of preventative care. (S4O-04929)

The Minister for Public Health (Maureen Watt): The 2020 vision for health and social care focuses on prevention, anticipation and supported self-management. We need to ensure that people can live and die well with whatever health conditions they have, and we are working with the Health and Social Care Alliance Scotland, which developed our self-management strategy, "Gau Yersel!", and administers the £2 million per annum self-management fund.

Our world-leading health literacy action plan, "Making it Easy", which supports people to be in

the driving seat of their care by building their skills and confidence to use health information, sits at the heart of our commitment to deliver a safe, effective and person-centred healthcare system.

Rhoda Grant: The one-stop shop in Inverness offers a range of services to adults with autistic spectrum disorder. Because of the delay to the budget this year, it is very concerned about the future of the service in Inverness. Can the one-stop shop and its clients continue to count on the Scottish Government's support? When will it be told that its funding will continue?

Maureen Watt: The one-stop shop in Inverness is a matter for the health board, as health boards fund all one-stop shops for people with autistic spectrum disorder. One-stop shops deliver an excellent service. I have visited the one in Aberdeen, which does a marvellous job. I hope that health boards continue to fund them.

Hepatitis C Treatment

7. Hanzala Malik (Glasgow) (Lab): To ask the Scottish Government whether the savings arising from the renegotiation of the price for new hepatitis C medicines will be used to increase the number of people receiving treatment. (S4O-04930)

The Minister for Public Health (Maureen Watt): Our sexual health and blood borne virus framework, which we published this September, committed us to increasing the annual hepatitis C treatment target to 1,500. However, we were clear that we will keep that target under review as the price of therapies changes and as more treatments come to market. The treatment and therapies group, which we established to provide us with expert advice on such matters, will meet later this month to discuss recent developments. It includes members from national health service boards, procurement services and patient organisations. We will consider carefully any advice that the group provides.

Hanzala Malik: The Scottish Government recently committed to eliminating hepatitis C as a public health concern. That is welcome but, to do that, we must increase even further the number of people who are diagnosed and treated. Will the minister consider establishing a working group under the new framework to investigate what steps we need to take to eliminate the virus, given the importance of realising that commitment?

Maureen Watt: The member is correct that we want to eliminate hep C in Scotland. The number that we are treating has been welcomed by all those involved. As I said, we have the treatment and therapies group, on whose advice we rely, and we look forward to its next report.

Farmers (Assistance)

8. Dennis Robertson (Aberdeenshire West) (SNP): To ask the Scottish Government what it is doing to assist farmers. (S4O-04931)

The Cabinet Secretary for Rural Affairs, Food and Environment (Richard Lochhead): The Scottish Government supports farmers in a range of ways. We provide around £500 million per annum of direct support through the new common agricultural policy, which for the first time will have access for new entrants and coupled support schemes for both beef and sheep producers.

The Scottish rural development programme supports around 11,000 farmers and crofters through the less favoured area support scheme and the new multimillion-pound beef efficiency scheme that we are introducing. The schemes seek to help Scotland's agriculture sector to have a profitable and sustainable future.

Dennis Robertson: At a recent meeting in Thainstone, in my constituency, I met farmers and suppliers, who expressed concerns that the banks are not issuing overdrafts or bridging loans to suppliers. In particular, banks are not meeting suppliers to discuss overdraft facilities. I know that the cabinet secretary has met farmers and the banks to look at the issue. What can he do to allay the fears and concerns regarding overdraft facilities?

Richard Lochhead: We share Dennis Robertson's concerns over the cash-flow issues that many Scottish farmers and crofters face. For that reason, I recently met RBS, Clydesdale Bank, Bank of Scotland and HSBC to discuss their relationship with our farmers. They all assured me that they are standing by the sector.

If any farmers have any particular problems, they should alert their local bank as soon as possible. If Dennis Robertson can make available any examples of issues that he has spoken to his constituents about, I ask him please to let me have them, and I will discuss them directly with the banks.

The Presiding Officer: I call Jim Eadie. [*Interruption.*] You pressed your button, Mr Eadie. I take it that you do not want to ask about farmers.

Jim Eadie (Edinburgh Southern) (SNP): Not today.

The Presiding Officer: There are not many in your constituency, then. [*Laughter.*]

Planning (Equalities Guidance)

9. Fiona McLeod (Strathkelvin and Bearsden) (SNP): To ask the Scottish Government what guidance is available to planning authorities to

ensure that equalities are central to the decision-making process. (S4O-04932)

The Cabinet Secretary for Social Justice, Communities and Pensioners' Rights (Alex Neil): Equality is integrated throughout Scottish planning legislation and guidance. A core value of the planning service is that it should be inclusive and engage all interests as early and as effectively as possible.

Fiona McLeod: I highlight to the cabinet secretary the petition that was submitted to the Parliament on 3 December by the East Dunbartonshire Visually Impaired People's Forum. It relates to shared-space schemes, which include the Catherine Street junction in my constituency, and the petitioners refer to the lack of consideration by East Dunbartonshire Council of the proposal's impact on the visually impaired and the mobility impaired. Can the cabinet secretary give the group any advice?

Alex Neil: I am aware of the petition and can confirm that officials have listened to the concerns of representatives from local disability groups. In general, shared-space schemes can be appropriate in some settings to put people and place before the movement of motor vehicles, but the decision is very much one for local decision making and local authorities on a case-by-case basis. It is clear that the forum's members and people like them should be given every opportunity to ensure that the space allocation in their community is absolutely adequate to their needs.

Cameron Buchanan (Lothian) (Con): What new efforts has the Scottish Government made to work with planning authorities to avoid the all-too-common scenario of local decisions being appealed and then overturned centrally?

The Presiding Officer: I am not sure that that is entirely relevant.

Dennis Robertson (Aberdeenshire West) (SNP): Does the cabinet secretary share my concern, which Guide Dogs Scotland has also expressed, that people with significant visual impairments, dementia and mobility problems cannot orientate themselves through shared spaces because there are no significant landmarks?

Alex Neil: I am very aware of the problem. Indeed, this morning, I launched the new official place standard tool, which will help local authorities and others to address some of these issues. The point that Dennis Robertson has raised is valid, and every planning authority—indeed, every department of every authority, including central Government—should take full account of it.

Common Agricultural Policy (Greening Measures)

10. Claudia Beamish (South Scotland) (Lab): To ask the Scottish Government what plans it has to adjust the common agricultural policy greening measures so that they can be implemented in the clearest way for farmers without jeopardising the environmental benefits. (S4O-04933)

The Cabinet Secretary for Rural Affairs, Food and Environment (Richard Lochhead): Next week, I will meet representatives from the European Commission to explain why its greening requirements, and particularly the three-crop rule, are not compatible with Scottish agriculture and why common sense must prevail to enable our farmers to choose alternative measures through what are known as the equivalence rules.

Claudia Beamish: At the Forth and Clyde regional meeting of NFU Scotland, various concerns were highlighted to me. I am concerned about a range of issues and particularly about the issue of grazing on ecological focus area buffer zones. The decision not to implement the grazing rule means that farmers are confused about the places where grazing cannot take place, and they are also confused about the buffers for watercourses and about whether an ecological focus area has to be added to that or can be part of the same buffer.

Richard Lochhead: There are three elements to the European rules on greening the new common agricultural policy, and 30 per cent of the payments depend on farmers meeting those conditions. Where we have had some influence to ensure flexibility in implementing such things in Scotland, we have worked closely with the sector, but if any specific concern has been expressed to Claudia Beamish, I ask her to contact my office. The issue sounds quite technical, but I am happy to meet her, learn more about it and see what we can do.

First Minister's Question Time

11:59

Engagements

1. Kezia Dugdale (Lothian) (Lab): To ask the First Minister what engagements she has planned for the rest of the day. (S4F-03116)

The First Minister (Nicola Sturgeon): Engagements to take forward the Government's programme for Scotland.

Kezia Dugdale: The Forth road bridge is more than just a road connecting Fife and Edinburgh; it is a strategic asset that is at the heart of the transport infrastructure for the whole country. Thousands of people rely on it to get to and from their work every day and businesses depend on it for getting their goods and services to their customers. I know of a shellfish firm in the Highlands that is worried about the impact of the bridge closure on business, and of a construction firm based in Fife that is thousands of pounds out of pocket because it is paying for staff to be put up in hotels in other parts of the country because it has deadlines to meet.

This morning, one business leader told me that the top priority was ensuring that small businesses can travel freely. On Tuesday, Derek Mackay agreed to authorise small vans to travel along the priority route, which is currently restricted to buses and heavy goods vehicles. Can the First Minister confirm when that change will take place?

The First Minister: First, I take this opportunity to again thank the public for their patience and forbearance during what I know is a period of significant disruption for many individuals and businesses. I also take this opportunity to thank a wide range of staff who are right now working around the clock to deal with this issue. I also restate my absolute determination and that of the Government to do everything that we can to minimise disruption and, even more importantly, get the Forth road bridge open again as quickly as possible.

On the point that Kezia Dugdale raised, a number of sources have raised issues with regard to how we can further improve the travel plan that is in place. Some of those proposals have already been implemented—for example, on the priority route that was put in place for buses and heavy goods vehicles, that priority has been lifted during the night-time period. We are currently considering a range of other proposals, including the light goods vehicle proposals that Kezia Dugdale spoke about.

I am sure that members will appreciate that we are trying to take all possible action to minimise the disruption that is caused, as far as possible. With regard to the priority route, in particular, we must take care that we get the balance right between sensible restrictions and not doing things that would deprioritise that route.

We are continuing to look at what flexibilities we can put in place and, as we have done since the weekend, we will continue to keep the public fully updated.

Kezia Dugdale: I accept that answer in its entirety, but the First Minister misses the fact that this was a promise that the Minister for Transport and Islands made on Tuesday to small businesses that has not yet been realised. Those small businesses are losing business every day. When the First Minister says that she needs to focus on minimising disruption, she has to fulfil that promise and act urgently. I ask her to ensure that the measure is put in place at the earliest opportunity, because we need more than short-term sticking-plaster solutions. If this situation has shown us anything, it is that we need a Government that does not put off essential work in the hope of saving money.

A new bridge is coming, and we supported that. The Government is working hard to mitigate emergency transport problems, and we support that too. However, for the First Minister to try to sweep everything under the carpet just will not wash.

We know that the bridge maintenance contract has been privatised by her Government, and that budgets have been slashed, also by her Government. We know that the budget for the bridge was cut by 65 per cent—Audit Scotland told us that. That is a cut to the maintenance budget of an ageing but essential asset. Given what has now happened, and with the benefit of hindsight, does the First Minister now accept that those budget cuts were wrong?

The First Minister: No, I do not. [*Interruption.*]

The Presiding Officer (Tricia Marwick): Order.

The First Minister: I think that the public deserve a proper and full explanation of the situation. Just to complete the point that Kezia Dugdale raised in her first question, we will continue to consider any suggestions that are made about how we can improve the travel planning and will implement any changes as quickly as possible. I simply make the point that we must ensure that, in opening up the priority route to more vehicles, we do not create a situation in which it ceases to be a priority transport route for the vehicles that we initially designated it for.

Let me turn to the other issues. The specific part of the bridge that is being repaired now was not broken back in 2010; the work that was considered in 2010 was prompted by concern about another part of the truss end link, not the part that is now cracked. The work that was considered in 2010 would have been a more extensive repair than was required, and it would have completely closed the bridge for a number of weeks. That is why the Forth Estuary Transport Authority—not the Scottish Government—which was made up of councillors from all parties, decided to do further analysis and proposed a more proportionate repair. That more proportionate repair was under way when the current defect was identified.

Let us look at the figures for 2010-11, which is the year in which we are being accused of underfunding maintenance. The grant that was provided to FETA was greater in that year than in any of the previous three years. Kezia Dugdale started her last question by saying that this Government somehow wanted to save money. Let me remind the chamber and the public that this is the Government that decided to invest in a new Forth replacement crossing. That is hardly the hallmark of a Government that was trying to save money.

What was Labour's position on building a new Forth replacement crossing? James Kelly, Labour's infrastructure spokesperson at the time—the person who was jumping up and down in the chamber yesterday, complaining that we had not fixed a crack five years before the crack appeared—said of the new Forth replacement crossing:

“from the start this has been a vanity project for the Scottish Government.”

It was those on the Labour benches, not the Scottish Government, who wanted to save money on making sure that people could continue to travel across the Forth.

Kezia Dugdale: People need to know that they have a Government that is prepared to learn the lessons of the past rather than one that is more interested in covering its tracks and blaming someone else. [*Interruption.*]

The Presiding Officer: Order. Let us hear Ms Dugdale.

Kezia Dugdale: On Tuesday, the transport minister, Derek Mackay, told the Parliament that there was no link between cancelled repairs in 2010 and the work that is needed now. On Wednesday, he made the fatal mistake of going on the radio and telling the truth—that they were linked. The public is rapidly losing faith in the transport minister's handling of the situation. We know that vital maintenance work that would have

repaired the damaged area was put off five years ago. Can the First Minister confirm what other works on the bridge have been cancelled or delayed because of a lack of funding?

The First Minister: Kezia Dugdale can go to the Forth Estuary Transport Authority's website and see its published minutes. That body took decisions about the prioritisation of works on the Forth road bridge entirely independently of the Scottish Government. Before we took over the grant funding, our role was to fund that maintenance programme.

It would have been helpful if Kezia Dugdale had listened to the last answer that I gave her. The specific part of the bridge that is being repaired now was not broken in 2010. [*Interruption.*]

The Presiding Officer: Order.

The First Minister: According to engineers, the fault that is currently being repaired on the Forth road bridge occurred within the past few weeks. That is the reality of the situation. We are now working—as the public have a right to expect us to do—to repair that fault and get the bridge open again as quickly as possible.

It is rich of Labour to come to the chamber and talk about the Government's commitment to keeping people travelling across the Forth bridge. I have quoted what James Kelly said when he was infrastructure spokesperson for the Labour Party. Perhaps Kezia Dugdale would also be interested in the views of her former employer and a former member of the Parliament, Lord George Foulkes. He said—[*Interruption.*]

The Presiding Officer: Order.

The First Minister: Lord Foulkes said that the new Forth replacement crossing—[*Interruption.*]

The Presiding Officer: Order. Let us hear the First Minister.

The First Minister: Labour does not want to hear this, because Lord Foulkes referred to

“prestige projects, such as the Forth replacement crossing, which is a total waste of money”.—[*Official Report, Public Audit Committee, 23 February 2011; c 2584.*]

That is what he said.

I will continue to ensure that I, the transport minister and the Government concentrate on minimising the disruption that people are suffering right now, getting the bridge reopened as quickly as possible and making sure that the new bridge that this Government took the decision to build gets completed on time, so that, at this time next year, that new bridge is also open to traffic.

Kezia Dugdale: I am sure that the hundreds of people who were on the 7.10 from Cowdenbeath

valued that answer and thought that the First Minister was on their side.

The First Minister encouraged me to look at the FETA website. I have done that. In fact, I have in my hand the minutes from the October 2013 meeting, which state:

“The Scottish Government’s September 2011 Spending Review resulted in a 58% reduction in the Authority’s capital funding and, as a result, a number of capital projects have had to be deferred to beyond 2015.”

The minutes go on to say:

“That deferral of part or all of these projects does increase the risk to the long term structural integrity of the bridge.”

Crucially, the truss end link work was one of the projects that were delayed. Key projects were delayed because of SNP Government cuts—short-term decisions that were made at the expense of the long-term future of an important national asset.

We have budgets cut, the privatisation of services and cancelled repairs. Instead of constantly trying to avoid the blame, when will the Government accept some responsibility?

The First Minister: Let me repeat the position again. The work that was being considered in 2010 was prompted by concern about another part of the truss end link, not the part that has cracked. The Opposition criticism—[*Interruption.*]

The Presiding Officer: Order.

The First Minister: Members might want to listen to this. The Opposition criticism of the Scottish Government appears to be that, five years ago, a body that took decisions independently of the Scottish Government decided not to fix a part of the bridge that was not broken. That part of the bridge broke only in the past few weeks. We might not have had a crystal ball to tell us five years ago that something would break five years in the future, but—[*Interruption.*]

The Presiding Officer: Order.

The First Minister: —we had the foresight to know that an ageing structure needed to be replaced. Therefore, this Government took the decision to build a new Forth replacement crossing. There is little doubt that that decision would not have been taken had Labour been in government.

What people in Fife and those affected by the closure want to hear from me today is this: the Government is absolutely focused on continuing to do what we have been doing since last Thursday night, which is minimising—[*Interruption.*]

The Presiding Officer: Order!

The First Minister: —as far as possible the disruption that the disclosure is causing and, even

more important, supporting those who are working right now around the clock to get the bridge reopened. That is what I will continue to focus on; that is what this Government will continue to focus on.

Prime Minister (Meetings)

2. Ruth Davidson (Glasgow) (Con): To ask the First Minister when she will next meet the Prime Minister. (S4F-03111)

The First Minister (Nicola Sturgeon): Monday.

Ruth Davidson: We should probably take the temperature down a notch. The priority clearly must be to ensure that the Forth road bridge is fixed as soon as possible and that the problems are addressed in full. However, the First Minister cannot avoid the fact that the budget for the Forth road bridge has been hammered in recent years.

Two weeks ago, the Chancellor of the Exchequer announced a significant increase in capital expenditure for Scotland—the money is there. Will the First Minister make it clear today that when the Deputy First Minister and Cabinet Secretary for Finance, Constitution and Economy unveils his budget next week, cuts to the bridge budget will be reversed, and that the Forth road bridge has every penny available to guarantee that it stays open for as long as we need it to?

The First Minister: The Deputy First Minister will set out the budget to the Scottish Parliament on Wednesday next week and members will have an opportunity to scrutinise the decisions that the Government has made, on Wednesday and as we go through the budget process.

I make it absolutely clear that our entire focus is on ensuring that the people who are working to repair the bridge have all the resources that are needed to repair it. We will not only ensure that we continue to fund repairs and maintenance on the bridge—as we have done—so that it stays open, but will ensure that we continue to fund the new bridge that is being built, so that, this time next year, we will celebrate its opening to new traffic. That is the Government’s priority and we will continue to focus on it 100 per cent.

Ruth Davidson: It is clear that the authorities gambled that the old bridge could be patched up until the new one was opened. Now we know that that gamble failed. In press reports this week, senior civil engineers have said that the bridge may not open to heavy goods vehicles and that the timetable for repair is unrealistic. This morning, Amey announced that preventative action is being taken on seven new sites. I hope that the Government is right and that the bridge will reopen in early January, but on behalf of all commuters and businesses, I ask the First Minister to

guarantee that, when the bridge reopens, it will open to all vehicles.

The First Minister: The Government's absolute intention is to have the bridge open for people returning to work in the new year and for it to be open as normal to all vehicles that previously travelled over it. That is what we have said all along and it is what we continue to say.

Everybody in the chamber will understand and—I hope—appreciate that, especially at this time of year, work to a structure such as the Forth road bridge is heavily weather dependent. I last spoke to the senior Amey engineer yesterday, and the update that I was given was that the repairs remain on track. We are monitoring the situation closely and talking to the engineers daily to ensure that we continue to be fully updated. Any changes to our expectations on the timescale for the repair will be fully communicated to the public in the normal way. At this moment, I remain of the view that the bridge will reopen in time for people returning to work in the new year.

Cabinet (Meetings)

3. Willie Rennie (Mid Scotland and Fife) (LD):

To ask the First Minister what issues will be discussed at the next meeting of the Cabinet. (S4F-03117)

The First Minister (Nicola Sturgeon): Matters of importance to the people of Scotland.

Willie Rennie: Everything that we have heard today and over the past week about the various issues to do with privatisation and capital cuts, the two senior engineers leaving and the Minister for Transport and Islands not being able adequately to explain the abandoned repair really makes the point that we need a thorough inquiry. That is what people in Fife expect and it is what the First Minister should actively support.

For today, people care most about sorting out the travel arrangements, fixing the bridge and preventing such a situation from happening again. To be frank, the bridge is struggling to cope, so what has the First Minister changed this week in the maintenance and inspection regime to minimise the chance of another major failure on that major transport artery for Scotland?

The First Minister: I spoke to engineers who are working on the bridge when I visited the traffic control centre at Queensferry on Tuesday morning. As we would expect of them, the engineers are taking the opportunity of the current work on the bridge to check other parts of it, as is appropriate. There is a very large number of parts to the bridge, all of which have their own inspection and maintenance regimes. The part of the bridge that, according to advice that we have had from engineers, cracked in the past few

weeks has a regular maintenance cycle attached to it.

First, we will continue to ensure that we minimise the disruption that people are suffering now. To go back to a point that I made earlier, that means that we will continue to listen to representations about how we adapt the travel plan that is in place. Secondly, we will support those who are working to repair the bridge so that the repair is carried out on time and the bridge reopens to all traffic at the start of the new year. We will also continue to ensure that proper maintenance on the bridge is in place, and that all critical repairs are funded and take place. Lastly—as I have said repeatedly—we will continue to focus on getting the new bridge completed on time and on budget and open to traffic by this time next year.

Willie Rennie: The bridge is under considerable strain, as everybody in the chamber knows, and with this happening within the past few weeks, the First Minister cannot be content just to carry on with the old engineering regime. We must have something new, something improved or something different to make the system much more robust. As the First Minister will have seen, the chaos in Fife has been quite dramatic, and we cannot afford a repeat of it, so what new things is she going to do? What improvement in the inspection regime is she going to order, given that we cannot afford this happening again?

The First Minister: As with the Forth Estuary Transport Authority before it, Amey has in place a robust inspection regime, which aligns with all industry standards. As I have said, Amey is taking the opportunity of the work that is being carried out right now to do a health check on the bridge, and if any repairs need to be done it will take the opportunity to do those, as well.

I would have thought that Willie Rennie would agree that what we are, and should be, focusing on right now are the things that I have mentioned: minimising disruption to the travelling public, minimising disruption to businesses that are affected by the closure, and making sure that all steps are being taken to repair the affected part of the bridge as quickly as possible so that the bridge reopens to traffic as soon as possible. Those are the things that we will focus on. That is my responsibility and it is the responsibility of this Government to make sure that we take all those steps.

As far as an inquiry is concerned, I will say what the transport minister said previously: it is open to any committee of Parliament to carry out an inquiry into anything it chooses to inquire into. If a committee chooses to carry out an inquiry of the kind that has been suggested, the Government will obviously co-operate fully with it. *[Interruption.]*

The Presiding Officer: Order.

The First Minister: Members on one side of the chamber appear to be more interested in playing political games; our focus is on ensuring that we act in the best interests of people who are affected by the closure, that we minimise disruption and that we get the bridge reopened. That will be my focus and the focus of this Government, and we will not be diverted from it.

Fiscal Framework

4. Jim Eadie (Edinburgh Southern) (SNP): To ask the First Minister what recent discussions the Scottish Government has had with the United Kingdom Government regarding the fiscal framework. (S4F-03123)

The First Minister (Nicola Sturgeon): The Deputy First Minister met the Chief Secretary to the Treasury on Monday. That was the fifth meeting since the publication of the Smith commission report, and it continued detailed discussions on the substantive elements of the fiscal framework that will underpin the financial provisions of the Scotland Bill. In particular, the Deputy First Minister and the Chief Secretary to the Treasury discussed options for adjusting the Scottish Government's block grant funding as a result of new powers over tax and spending.

Jim Eadie: The First Minister will be aware that Lord Smith has stated that the fiscal framework is

"fundamentally important to making Scotland's new powers work"—[*Official Report, House of Lords, 24 November 2015; Vol 767, c 593.*]

while Professor Anton Muscatelli has warned that the method of adjusting the block grant

"matters greatly for Scotland's economic future"

and could see Scotland's budget falling by £7 billion over the next decade.

Given the importance of the fiscal framework and the serious implications that it will have, does the First Minister agree that it is vital that the Parliament speaks with one voice to protect Scotland's future budgets and public services against the clear and present danger that is now posed by the UK Treasury?

The First Minister: When credible independent voices ranging from the Institute for Fiscal Studies to the principal of the University of Glasgow and the Scottish Trades Union Congress all raise serious concerns, all members of this chamber really should take note. Professor Muscatelli has put the risk to our budget that is posed by what is known as levels deductions as the means of assessing our block grant adjustment at a mammoth £7 billion over 10 years. That would be simply unacceptable.

I hope that all members of all parties can agree that such a proposal could not conceivably be accepted by this Government. That is why we continue to negotiate in good faith for a reasonable agreement that is in the interests of people in Scotland.

Jackie Baillie (Dumbarton) (Lab): I welcome the First Minister's commitment to stay at the negotiating table. She will, of course, be aware that the Scottish Government has borrowing powers of £304 million this year. Given that there are only three months left in the financial year, can she tell us whether the borrowing is likely to be through the national loans fund, through the banks on commercial terms, or through the issuing of bonds?

The First Minister: We make operational decisions on those issues during the year and, of course, John Swinney will set out his budget for 2016-17 when he comes to the chamber next week.

I hope that Jackie Baillie will join her colleague Malcolm Chisholm in expressing support for the Scottish Government's position over the fiscal framework negotiations. I welcomed the comments that he made yesterday, accepting that what the Scottish Government is arguing for would be

"the best and most risk-free option for Scotland".—[*Official Report, 9 December 2015; c 11.*]

I hope that Jackie Baillie could find it within herself to support that position, too.

Gavin Brown (Lothian) (Con): The method for calculating VAT will be critical to the fiscal framework. Is the First Minister's position that VAT should be calculated according to the place of production or the place of consumption?

The First Minister: That is one of the many issues that are under discussion. Whether the issue is how we calculate VAT, how we calculate over the years to come the deduction from Scotland's block grant or how we take account of set-up costs, we are arguing for a settlement that is not somehow unfairly advantageous to Scotland, but is fair and reasonable to Scotland.

We will continue to argue for that position across a range of issues, and I hope that we get to a position where the Scottish Government and the UK Government can agree a deal that allows the new powers to come into effect so that the Scottish Government can get on with using them.

Climate Change

5. Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): To ask the First Minister whether the Scottish Government considers that there is a gap between its position on climate

change and its policy on air passenger duty. (S4F-03113)

The First Minister (Nicola Sturgeon): No, but we take those issues very seriously. [*Interruption.*]

The Presiding Officer: Order.

The First Minister: That is why international aviation and shipping are in the Climate Change (Scotland) Act 2009, which both Malcolm Chisholm and I voted for. We encourage other Governments to include shipping and aviation in their own climate change acts.

It is important that we continue to take a balanced approach. Scotland is already punching above our weight in the international effort to tackle climate change, and we are on track to meet our 42 per cent emissions reduction target by 2020. Indeed, the latest climate group report, which I helped to launch at the Paris climate talks this week, shows that Scotland has one of the largest drops in emissions of 44 leading regions and states that champion action on climate change.

Equally, I recognise that there are important environmental as well as economic issues when we consider a reduction in air passenger duty, which is why we are working with environmental groups among others in developing our legislative proposals.

Malcolm Chisholm: I welcome what the First Minister said about climate change in Paris and I am glad that she went there by train. However, in this week of all weeks, will she reconsider her proposal to slash air passenger duty? Does she not realise that the Scottish Government's research indicates that that would result in hundreds of thousands more journeys by plane instead of train; that the majority of those extra journeys would be in the United Kingdom, which nullifies the argument that she used last week about exports; and that the result would be a big boost to aviation emissions, which are already growing faster than the emissions of any other sector?

The First Minister: We will continue to take a balanced approach that prioritises economic growth and takes very seriously our commitments and responsibilities to the environment. As I said when I was in Paris on Monday, there is recognition among a wide range of other countries not that Scotland's record is somehow flawless or perfect but that Scotland is showing international leadership. We should all be proud of that, and it suggests that the Scottish Government should continue to take the balanced approach that we have taken.

Domestic Abuse

6. Roderick Campbell (North East Fife) (SNP): To ask the First Minister what the Scottish Government's plans are to tackle domestic abuse. (S4F-03121)

The First Minister (Nicola Sturgeon): Domestic abuse is completely unacceptable and we must eradicate it from our homes and communities. We are strengthening the law in the area and taking action through record levels of funding. We have committed almost £12 million this year and a further £20 million over three years to support a range of projects to tackle violence against women.

Through the equally safe strategy, our aim is to prevent and eradicate all violence against women and girls in Scotland. The joint strategic board that has been set up under that strategy consists of senior leaders from the public and third sectors with specialist knowledge of domestic abuse issues, and it is working hand in hand with the Scottish Government to ensure that we can achieve that aim.

Roderick Campbell: The consultation on the potential for a specific domestic abuse offence closed in June, and an analysis of the response was published in October. Recently, the Scottish Women's Aid charity estimated that there are 25,000 new cases of domestic abuse a year. The Scottish social attitudes survey on attitudes to violence against women that was published in November found that there were notable differences in the perception of what was considered to be "very seriously wrong" behaviour towards women, depending on the circumstances. Can the First Minister comment on those survey findings and provide an update on the position on potential legislation?

The First Minister: Yes, I can, but I would first like to pay tribute to the work of the Women's Aid movement and all that it does to support women and children who are at risk of and experiencing domestic abuse. We have much to do to end the scourge of domestic abuse and to change the negative attitudes that drive it.

The social attitudes survey that Rod Campbell mentioned makes for really grim reading on some of the attitudes that still exist today in our society. That said, it also provides a helpful baseline that will in future allow us to evidence the changes that we want to make to realise our ambition of eradicating violence against women. As I said, we are working with stakeholders through the equally safe strategy to bring renewed focus in the area.

We are making progress on the changes to the law. A draft domestic abuse offence was published on 30 November, and initial feedback on that from members of the equally safe justice expert group

has been positive. Following further work, a full formal consultation on the draft offence is due to be published by the end of the year.

Coalfields Regeneration Trust

The Deputy Presiding Officer (Elaine Smith):

The next item of business is a members' business debate on motion S4M-14721, in the name of Christine Grahame, on the continuing success of the Coalfields Regeneration Trust. The debate will be concluded without any question being put.

Motion debated,

That the Parliament celebrates and commends the successes of the Coalfields Regeneration Trust (CRT), which is dedicated to improving the quality of life in Scotland's former mining communities, including those in Midlothian, by encouraging small voluntary charitable and other organisations to expand their scope, build new partnerships and tackle more ambitious projects; understands that this is achieved by working in the heart and soul of coalfield communities, delivering on the Community Empowerment (Scotland) Act 2015, land reform, the Regeneration Strategy and social justice by investing resources, expertise and knowledge to ensure that local people are able to fulfil their potential, developing projects from the bottom up with involvement from the community; notes that this also includes the Participatory Budget Fund, a small fund offering small grants to groups and projects; congratulates the CRT on this work, which includes awards in Gorebridge ranging from over £3,000 to Midlothian Scout Group to £500 to Gorebridge Arts Collective, and wishes the trust well in its continuing work.

12:33

Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP): I thank all who supported the motion, the members who have stayed behind to take part in the debate and people in the public gallery from the Coalfields Regeneration Trust.

Neil Findlay (Lothian) (Lab): On a point of order, Presiding Officer. My understanding is that there are people outside the public gallery waiting to come in for the debate. Would it be in order for us to delay slightly to allow some of those people to come in?

The Deputy Presiding Officer: Ms Grahame, do you want to comment?

Christine Grahame: Yes. I am grateful to the member for that. I am in the same position as him, in that I also have people who are coming into the public gallery. When people are filtering out, it sometimes means that those who wish to hear a members' business debate cannot get in. I am very grateful for that point of order.

The Deputy Presiding Officer: Yes, it can be difficult when people are leaving the public gallery and other people are trying to come in at what is one of our busiest times. I will suspend the meeting for a few minutes.

12:34

Meeting suspended.

12:36

On resuming—

The Deputy Presiding Officer: I should say to members that when a number of visitors are coming to the chamber for a debate, if the parliamentary authorities are alerted they can make arrangements for specific people to get in different ways.

I call Christine Grahame.

Christine Grahame: Thank you, Presiding Officer. I will rewind.

I thank everyone who supported the motion, the members who have stayed to take part in the debate and the people in the gallery from the Coalfields Regeneration Trust, in particular Pauline Douglas, who has been of great help to me.

I could not have predicted that, decades on from the early death of my Welsh maternal grandfather, a man I never knew, who died in his 40s from injuries sustained down the pits in Derbyshire, I would be privileged to represent three former mining communities.

My grandfather's early death left a large family as orphans, including my late mother, who was sent to an orphanage at first, separated from a brother whom she loved dearly, and then to the care of elder sisters. My mother's was one of the many families that suffered from the hardships and hazards of the pits. Such suffering continued through the decades, sadly, but from it grew individual resilience and a community spirit that is undaunted by adversity.

Penicuik came into my constituency in 2007, followed in 2011 by Gorebridge and Newtongrange. Newtongrange is the home of the national mining museum of Scotland, formerly the Lady Victoria colliery, which dates from the 19th century and ceased production in 1981.

In Newtongrange, the conveyor that carried the mined coal crosses high above the A7, and the symbolic wheel, which lowered the miners' cages, dominates Main Street. There are orderly rows of miners' cottages from First Street to Tenth Street, and the streets have coal lanes for ease of delivery of the miners' allocation of coal into their yards. The fingerprints of the Nitten folk's mining past are on every corner of the community, right down to the Dean Tavern, which was a Gothenburg tavern.

In Gorebridge the initial industry was gunpowder production, but mining took over with the sinking of

the Emily and Gore pits in 1847. Just as in Newtongrange, the run of the streets in the old part of Gorebridge is an indelible mark of that industrial past.

Penicuik suffered the tragic Mauricewood pit disaster. On 5 September 1889, a fire in the mine led to the loss of 63 lives—77 men were underground at the time. Today, the Shottstown miners' welfare club in Penicuik is another marker of that past mining life.

I am giving members this potted history because, just as the landscape, streets and houses are a visible reminder of the mining past, the spirit of the mining communities is in people's DNA. The communities all have their brass or silver bands, their gala days, their welfare clubs and a proud and protective sense of community. Nowadays, that spirit is also evident in the community development trusts and other voluntary organisations. If members were wondering, that is where the Coalfields Regeneration Trust comes in. Funded by the Scottish Government, its purpose is to improve the quality of life for people in Britain's former coalfield communities. It takes the role of a sort of beneficial Goliath, helping the Davids of this world by encouraging small voluntary, charitable and other organisations in the coalfield communities to expand their scope, build new partnerships and tackle more ambitious projects.

Grass roots is where the trust starts working and where it belongs: at the heart and soul of coalfield communities, delivering on the Community Empowerment (Scotland) Act 2015, land reform, the regeneration strategy and social justice. It ensures that local people in those communities can fulfil their potential. Funding for programmes is done from the bottom up, with involvement from the community that the trust aims to serve. It helps communities get done the things that they want to be done.

A particular aspect of the coalfields community futures programme is the participatory budget fund—that is a mouthful—which is an important but small fund that offers small grants to groups and projects in each area. Community representatives are on the steering group and it is they who decide who receives awards and how much they receive. It kick starts the implementation of each plan, with priority given to those who contribute to the actions that are identified in each plan. That is real grass roots in action.

The coalfields community futures programme is an approach to local community planning and sustainable community development that aims to encourage active citizenship and build local democracy. It enables communities to devise a community action plan that makes a case for the

things that communities think are important and want to make happen.

Alongside the action planning process, the trust offers each community a participatory budget fund of £20,000, which gives the community a chance to vote on its priorities for funding and make relevant decisions.

I have some examples of what has been achieved through the Coalfields Regeneration Trust. Gorebridge primary school parent teacher association got £688 for an anti dog-fouling campaign, and Gorebridge community development trust got £4,469 for its history archive. Previous awards in Newtongrange have ranged from £5,000 for the pipe band to £10,000 for refurbishment of the silver band's hall. The largest amount, £56,500, went to Midlothian Women's Aid for the refurbishment of its refuge. Those examples give a taste of the range of projects and the funding involved.

While it is about money—and what is not?—it is not just about money; it is also about building community confidence and recognising the cohesion and pride in identity, and the mining community's strength and resilience, which remain indefatigable over the generations. It takes that pride in community and the future and turns it into action and practical successes.

I commend the Scottish Government for continuing to fund the Coalfields Regeneration Trust and the valuable community work that it does. It delivers £1.81 for every £1 it receives, almost doubling what that money can do. Most of all, I commend the Coalfields Regeneration Trust for the practical and effective work that it delivers, which is visible throughout the mining communities.

12:43

David Torrance (Kirkcaldy) (SNP): I thank Christine Grahame for bringing the motion to Parliament.

Since its inception in 1999, the Coalfields Regeneration Trust has become an important and essential programme for Scottish communities. Christine Grahame rightly points out in her motion that the Coalfields Regeneration Trust is so effective because it invests “resources, expertise, and knowledge” in

“the heart and soul of coalfield communities”.

The Coalfields Regeneration Trust is a truly holistic organisation that supports a wide array of services in communities that are based around the former mining industry. Often, it has done so by empowering existing local organisations. To name just a few examples, targeted communities have seen 4,337 new jobs, 2,899 bettered community

facilities, 1,170 new social enterprises and more than 200,000 opportunities for children to participate in healthy lifestyle activities. That success shows that the trust creates an invaluable framework of support for former mining communities throughout Scotland.

I particularly welcome the work of the trust because it has had a positive impact in my constituency of Kirkcaldy. As colleagues will be aware, mining has been a central part of the history of Kirkcaldy and the surrounding area; not least in the case of the miners' strike in the 1980s, mining has fundamentally affected the local economy and community life. That is why the Coalfields Regeneration Trust is so valuable.

In its many years of existence, the trust has funded projects as varied as the Day Centres Service, which provides activities for the elderly in our community; the Fishbowl Nursery, which works to give our youngest community members a good social and educational foundation; and Frontline Fife Homelessness Services, which not only provides temporary accommodation for homeless members of the community but advises students and other community members on how to find and finance homes.

Although many organisations in my constituency have benefited from the Coalfields Regeneration Trust, I would like to focus on one in particular, the Linton Lane Centre in Kirkcaldy. The Linton Lane Centre does it all—among other programmes, it runs children's dance programmes, day care services, child health drop-in hours, family support groups and smoking cessation meetings, and it provides local recreational teams and societies with a place to meet. Through its varied initiatives and its engagement with many community members, the Linton Lane Centre is truly a wide-reaching organisation.

Although the centre receives funds from Fife Council, like so many other organisations it needs supplementary funding to keep it running. The centre receives donations from other places, but its incredible success in the past few years has very much depended on the refurbishment of its facilities, which are central to its programming—refurbishments that were made possible by the grant that it received from the Coalfields Regeneration Trust. Now, four years later, the centre is still thriving, thanks to the trust.

The Linton Lane Centre is an excellent example of the Coalfield Regeneration Trust's efforts. However, there is still more that needs to be done. The centre for regional economic and social research at Sheffield Hallam University reports that Britain's coalfield communities still face many obstacles, including fewer jobs, lower business formation rates, higher unemployment rates, poorer health, more people on welfare and a

struggling community sector. While the projects that the trust has already funded have had a positive impact on thousands of people, many people living in former mining communities need more help.

The coalfields community challenge is one example of how the trust is attempting to expand its reach and help more people. The challenge allows sports groups in coalfield communities to propose projects that will increase physical activity levels in those communities. One of the challenge's criteria is that the project must engage with those who are currently inactive. While the challenge is a closely targeted competition that focuses on one issue that is important to the communities and to Scotland as a whole, it has the potential to engage and help even more people throughout Scotland. One organisation in my constituency, the Methilhill Community Children's Initiative, was successful in receiving funding from the trust. The MCCI runs various activities for children and their families, including gardening classes and a children's newspaper. The trust awarded MCCI £2,900, which will enable it to build a hub for indoor activities that will include changing facilities and storage space.

The Deputy Presiding Officer: Mr Torrance, could you draw to a close, please? We are tight for time.

David Torrance: It is clear that the Coalfields Regeneration Trust not only aims to assist the Scottish communities that need that assistance most but makes an active contribution. I truly support Christine Grahame's sentiment that the trust must be applauded and receive continued support for its efforts.

12:48

Cara Hilton (Dunfermline) (Lab): I thank Christine Grahame for securing the debate and welcome the delegation from the Coalfields Regeneration Trust—many from my constituency.

It may be 30 years since our coal industry was deliberately destroyed by Thatcher and her Tory Government, but the legacy of poverty, deprivation, unemployment and ill health continues to live on in our communities—communities that will never forget the devastation caused by Thatcher and her attack on the National Union of Mineworkers.

Sadly, the deprivation gap between coalfield and non-coalfield areas is getting worse. In Fife, one third of our coalfield communities fall within the 20 per cent most deprived areas. The impact of that is felt every day by the children who live in poverty and the families who are forced into food banks, and through the lack of jobs and

opportunities and the ill health that literally cuts life short.

I echo the comments that have already been made about the fantastic work of the Coalfields Regeneration Trust in supporting our communities. It assists people into work, equipping them with skills, qualifications and opportunities. It also supports fantastic projects such as West Fife Enterprises in my constituency, which since 2000 has received £400,000 in funding from the CRT to renovate the Forthview training centre and run employability programmes. During the past 15 years, the CRT has approved more than 1,000 grants across Fife, totalling more than £5 million—an investment that has made a real difference in rebuilding communities and in empowering people in the communities that I represent.

In Oakley, the CRT funds a youth drama group, a homework club, a summer play scheme, a parent and toddler group and a heritage group. In Kincardine, it is supporting the community association to start up a women's group, a forest kindergarten and a breakfast club. It also supports Tulliallan guides, café connect and Tulliallan bowling club. In Saline and Steelend, it supports an information and access initiative; in High Valleyfield, it is funding a new kitchen at the sports and recreation club; and in Culross, it is supporting the Scottish Mining Convalescent Trust to buy a minibus and build a new accommodation wing.

However, it is not just about funding; as Christine Grahame has already alluded to, it is also about building capacity through the excellent coalfields community futures programme. That involves local people setting out their own vision, agreeing on the issues that matter in their community and setting their own priorities for action.

In West Fife, the futures programme has been delivered successfully in Kincardine, Oakley and Comrie and has now kicked off in High Valleyfield and Low Valleyfield.

I make particular mention of Kincardine, where 550 people attended the community futures event. One of the top priorities that they identified was the reopening of Kincardine train station to provide residents, commuters and visitors with quick and sustainable connections to Stirling and Edinburgh.

Given the transport chaos that is being experienced by Kincardine residents right now, with road closures having a hugely detrimental impact on local residents and on local businesses such as the Baking Room, it is time for Network Rail, the Scottish Government and Fife Council to look into the issue as a matter of urgency to see what support they can give to get that plan moving.

Despite all the CRT's excellent work, there are challenges ahead, and there is a lot more to be done to achieve the CRT's vision of communities that are

"sustainable, prosperous, viable and cohesive without support".

It is therefore vital that the CRT receives continued—indeed, much-increased—financial support from the Scottish Government to allow it to continue to play a key role in revitalising our communities.

I would also like to see more action from the Scottish Government to support West Fife Enterprise, which is currently struggling due to delays in funding being released from Europe. I hope that the minister will agree to assist with that issue.

I conclude by wishing the Coalfields Regeneration Trust continued success in supporting, regenerating and empowering our communities. I know that the work that it does makes a real difference, day in and day out, in the communities that I represent.

However, I also ask—at the risk of being controversial—the Scottish Government to extend its support to our coalfield communities to address another lasting legacy. I ask it to act to deliver justice for mineworkers by agreeing to hold a full, independent public inquiry into the policing of the miners' strike—as is being pursued by my colleague Neil Findlay—to review the wrongful convictions of nearly 500 Scottish miners, including many of my constituents, and to finally tackle that miscarriage of justice. We have the powers in the Scottish Parliament to right those wrongs, and we should use them to ensure justice for the miners, their families and our coalfield communities.

The Deputy Presiding Officer: Due to the number of members who still wish to speak in the debate, I am minded to accept from Christine Grahame a motion without notice, under rule 8.14.3, to extend the debate by up to 30 minutes.

Motion moved,

That, under Rule 8.14.3, the debate be extended by up to 30 minutes.—[Christine Grahame.]

Motion agreed to.

12:53

Liz Smith (Mid Scotland and Fife) (Con): I congratulate Christine Grahame on what was a very eloquent and informative opening speech.

To pick up on one thing that Christine Grahame mentioned, I think that it is the fostering of projects and local partnerships—that fusion of expertise and guidance with local research—that is so

important. It is a potent combination that can deliver well-targeted results for so many of the communities. We have heard some examples of that. That focus on localism also has lessons for policy in other areas.

My area of Mid Scotland and Fife is home to a number of coalfield communities including those in Fife, in Stirling and in Alloa, where the Coalfields Regeneration Trust has its Scottish head office. It is very important to Clackmannanshire because the regeneration of former coalfield communities is key to building stronger, safer and more prosperous communities, often in areas where they had tremendous difficulties in the past.

There can be any number of challenges facing coalfield communities, as Christine Grahame indicated. The Coalfields Regeneration Trust is therefore completely right, in my opinion, to recognise that the best people to come up with innovative and well-targeted solutions are the locals themselves, because a one-size-fits-all approach is simply not appropriate. However, that does not mean that there is not a national balance to be had. The Coalfields Regeneration Trust is a fine example of how to get that balance right when it comes to the huge amount of local potential in Scotland that is now being harnessed nationally.

I very much welcome the coalfields community investment programme, which supports lots of activities that are delivered by community and voluntary organisations working in Scotland's coalfield communities. That investment can be capital or revenue awards, which range from around £500 to a maximum of £10,000 and are obviously extremely important. I know that a number of organisations in my constituency have benefited recently in that regard, including many community groups, which will help their development in the Kelty area and in Kirkcaldy.

I know that we are short of time, Deputy Presiding Officer, so I will finish by adding my congratulations to the Coalfields Regeneration Trust. I think that it does fantastic work, and I am delighted to take part in this debate.

12:56

Alex Rowley (Cowdenbeath) (Lab): I had the chairman of the Coalfields Regeneration Trust, Councillor Bob Young from Fife, on the phone to me this morning asking me to thank Christine Grahame for securing the debate.

I certainly have been a big supporter of the Coalfields Regeneration Trust over many years. I attended an event in connection with the CRT in Kelty recently at which a number of groups got awards for local funds; it was a really positive evening. Crucially, whether it is in Cowdenbeath, Kelty, Benarty or Cardenden, the Coalfields

Regeneration Trust is working to develop local community plans in my constituency.

One of the questions arising from the Community Empowerment (Scotland) Bill was about the capacity of communities with higher levels of deprivation to drive forward that empowerment agenda. The role of the Coalfields Regeneration Trust has changed over the years and it is playing a key role in my constituency now in capacity building, which is something that the Government has accepted that we need to do. From that point of view, I think that there is a bigger role for the Coalfields Regeneration Trust going forward.

We can take a nostalgic view of coalfield communities. I am a miner's son who comes from a mining community and I am very proud of that. However, the fact is that in the coalfield communities we have third and fourth-generation deprivation, inequality and poverty, so the scars of the mining industry in terms of poverty and deprivation are still very much in existence in coalfield communities across Fife and other parts of Scotland. As I continually argue in this place, we need a programme that focuses on having an anti-poverty strategy that runs through all levels of government.

If we want to know where the deprivation and poverty is, we can go to communities in the former industrial areas and coalfield areas across Scotland, and find there very high levels of poverty and deprivation. If we want to be serious about tackling that through an anti-poverty strategy, part of it must be about having organisations on the ground that will build capacity for communities through the type of work that was talked about earlier by the member for Kirkcaldy—he seems not to be here now—and others. The Linton Lane Centre and similar innovative projects will help people, and we need to use them to move forward.

I noticed this morning that the RSPB has put out a briefing that highlights the aftermath of opencast coal mining. In Fife and East Ayrshire in particular, there are still environmental scars from the disaster that unfolded through opencast coal mining. We need a bigger debate somewhere else on that, but it is certainly worth while mentioning today, because the affected communities will be left with those environmental scars unless we do something about it.

I congratulate Christine Grahame on securing the debate. I say to the minister that although it is legitimate to ask whether there is still a need for the Coalfields Regeneration Trust, the answer is, "Absolutely," albeit that its role is changing. We need an anti-poverty strategy and we need to tackle deprivation and poverty in the former coalfield communities, and the Coalfields

Regeneration Trust has a key role to play in building capacity to do that.

The Deputy Presiding Officer: Before we move on, I advise the Parliament that the member for Kirkcaldy sought my permission to leave the chamber for urgent personal reasons. I would like to put that on the record.

13:00

Adam Ingram (Carrick, Cumnock and Doon Valley) (SNP): I congratulate Christine Grahame on securing the debate. As she rightly pointed out, the Coalfields Regeneration Trust has been making an invaluable contribution—

The Deputy Presiding Officer: Mr Ingram, will you turn your microphone round slightly? We are having some difficulty in hearing you.

Adam Ingram: Okay. Sorry. Oh—that is better. *[Laughter.]*

As I was saying, the CRT has been making an invaluable contribution to economic development and wellbeing in former coalfield communities for many years now. In my constituency of Carrick, Cumnock and Doon Valley, some 138 funding awards have been made to 101 local organisations, totalling some £2.4 million since 2000. It is fair to say that the trust has been the leading regeneration organisation that is dedicated to improving the quality of life in former mining areas, which, as others have said, have been blighted for decades by deprivation, ill-health and unemployment.

It should be recognised that many of the communities in my constituency came into existence, grew and declined in direct relation to the fortunes of the coal industry. Even today, as Alex Rowley mentioned, the apparent demise of the opencast coal industry is visiting more misery on communities that have never been able to attract new industry to replace their former levels of economic activity.

In that context, it is hard to overstate the work of the trust, which aims to empower coalfield communities to help themselves. It delivers services that help people to gain skills, achieve qualifications, find work, set up and grow new businesses and become more active in their communities. In recent years, as Alex Rowley also said, the focus has been on building community capacity and asset building, to use the jargon.

I would like to highlight two examples of that work in my constituency. First, the Dalmellington action plan for 2012 to 2017, which was funded by the trust's community futures programme, defined the priorities and projects that the community would pursue over that five-year period after an extensive process of community engagement.

Many significant improvements have resulted, from town centre building frontages to woodland paths, from increased police presence to annual litter campaigns, from upgraded youth and leisure facilities to business start-up support, and from new signage to tourism development support. Some £240,000 of external funding has been leveraged in, on top of the original £150,000 from the trust, to implement a programme that is carrying the community forward with a renewed confidence.

My second example is Netherthird Community Action Training, which is a social enterprise that provides training and employment opportunities in gardening and outdoor maintenance for young people across Cumnock and district. It was established in 2012 following its success in being the coalfields community challenge winner in 2011 and receiving a financial award of £50,000 from the Coalfields Regeneration Trust to kick-start the social enterprise.

Last year, the Minister for Housing and Welfare, Margaret Burgess, and I had the pleasure of visiting Netherthird community garden to meet Jamie Campbell, the young entrepreneur who is responsible, and to see Netherthird Community Action Training in action.

Suffice it to say that I am grateful for the Coalfields Regeneration Trust's activities in Carrick, Cumnock and Doon Valley and I commend its work to the Parliament.

13:04

Neil Findlay (Lothian) (Lab): I apologise, Presiding Officer; I have to leave after I have spoken, to meet a constituent.

I pay tribute to the CRT and its employees and trustees, particularly my good friend Nicky Wilson, and Joe Thomas, who is a former trustee and an ex-colleague of mine.

The CRT was established by the Labour Government to look at and address the deep-seated issues in the former mining communities. That happened after intense lobbying by mining MPs such as Dennis Skinner, Mick Clapham, Eric Clarke and others, who saw first hand the lasting and devastating impact of pit closures on their communities and the people who live there. I have seen that impact for my entire working life. Throughout that time, in my community I have observed the fall-out of the closure of Polkemmet colliery and, down the road a bit, British Leyland.

I have been involved in many projects that have attempted to rebuild communities and put in infrastructure and services to support the people in them. The CRT has been involved in many of those projects. The pitstop at Loganlea is attached

to Loganlea Miners' Welfare Society and Social Club and is a fantastic resource for the village. The West Calder Community Development Trust is a recent development that is doing terrific work, as is the Stoneyburn and Bents future vision group. The Blackburn, Seafield & District Credit Union has benefited greatly from CRT support and now operates across the area. In Fauldhouse, the Fauldhouse Community Development Trust hub project and the miners welfare club have benefited greatly from CRT support. All those groups are fantastic and do much-needed work, and there are many more. Similar work goes on elsewhere, as members have said. Christine Grahame mentioned Gorebridge and Newtongrange, and work also goes on in areas such as Danderhall and Dalkeith.

We do not have the 26 per cent unemployment rate that we had when the pits closed—thank God for that—but the reality is that those communities are still suffering badly. They have higher rates of employment, low levels of business start-ups, low pay, job insecurity, high claimant rates and financial deprivation. Those communities may have financial deprivation, but they also have humanity, decency and dignity. Whatever happens this week, when the final deep mine in Scotland closes—I give great thanks to Liz Smith's party for its historic role in that—the people will not die, even though the industry has gone. We must support the people in those communities.

We need the work of the CRT and others who work in partnership with it to continue. We need to keep funding those projects. The reality is—I cannot take part in the debate without raising this—that the CRT's funding has been hammered over the past decade. It received £1.8 million from the Scottish Government in 2007. In 2013, it received £422,000. Forgetting about inflation, that was a 75 per cent cash cut in its budget, and it would be remiss of us not to mention that. The CRT's work is fantastic. Think how much more work it could do, Presiding Officer, in your constituency of Coatbridge and the constituencies represented by all the members here, if the funding went back to what it was before.

In my constituency, we need much more of the type of community development work that the CRT and others are involved in. I just wish that the Government would put its heart into it.

13:05

Colin Beattie (Midlothian North and Musselburgh) (SNP): I thank Christine Grahame for instigating the debate and allowing the important work of the Coalfields Regeneration Trust to be highlighted in Parliament. It must be clear to members from what they have heard that the trust provides invaluable aid to parts of our

constituencies that are most in need of help and rejuvenation.

My relationship with the trust dates back to 2007, when I was first elected as a councillor in Midlothian. At the time, I was keenly aware that the decline of the coal industry had taken its toll across the Lothians. The trust's 2013 report, "Analysis of Coalfield Area Deprivation in Scotland", confirmed that.

In the six years between my becoming a councillor and the publication of the report, the Lothians coalfields reported the highest increase in the most deprived areas in a group that included Ayrshire, central Scotland and Fife, and Lanarkshire. Twenty-one per cent of the Lothians' data zones ranked in the worst 20 per cent of data zones in Scotland, which was five percentage points higher than in 2006. That is obviously a major concern, especially in this age of austerity, but funded by the Scottish Government, the Coalfields Regeneration Trust is providing badly needed help and funding to many organisations to help and encourage communities to come out of the decline from the ground up.

I have visited and worked with many of the groups that have received such help, and could speak at length advocating the work that they do for their communities. I mention, for example, Mayfield and Easthouses Development Trust, the Mayfield and Easthouses Youth 2000 Project, the Midlothian Association of Play, Bonnyrigg old folks club and the Cousland Village Hall Association, which are just some of the local charities that have received help and funding from the trust for a wide range of projects. I have seen at first hand how communities have benefited from that funding and the results of the trust's support.

One of the trust's more recent initiatives is a dragon's den, which gives sports clubs and organisations that are based in Scotland's coalfield areas the opportunity to pitch for funding from a range of dragons including Nicky Wilson, the National Union of Mineworkers president, and Jim Leishman, who is an honorary director of Dunfermline Athletic Football Club. In fact, the next den is being held tomorrow in Alloa, and I am sure that Parliament passes its best wishes to all the participating groups—mind you, I am not sure that I would want to be in their shoes.

As a specific instance of CRT's broad approach and responsiveness, some of my fellow MSPs and people in the gallery might know that I am a director of Midlothian business launch pad, which aims to provide support and assistance to young people who want to start their own businesses. I recently met Pauline Douglas and Alex Downie of the Coalfields Regeneration Trust—

Christine Grahame: I am glad that Colin Beattie has got Pauline Douglas's name correct. I think that I called her Carol. I must have Christmas on the brain. I just want to apologise for miscalling her.

Colin Beattie: Ah, Borderers. [*Laughter.*]

As I was saying, I recently had an extremely fruitful meeting with Pauline Douglas and Alex Downie of the Coalfields Regeneration Trust to discuss the possibilities of partnering together to raise awareness of the Midlothian business launch pad and to expand participation. It has been clear to me for some time now that although the launch pad can provide all the facilities required for any prospective business we can do better in making ourselves more widely known to our potential audience; the trust's representatives grasped that straight away and proposed several initial ways of providing positive engagement. We will meet again in the new year, and it is very much my hope that we can expand our reach to young people who have a great business idea but who lack the support to take it forward. There is no doubt that the trust's reach into the heart of our coalfield communities allows it to speak to many constituents who might not otherwise be heard.

It is clear to me—and, I hope, to all members in the chamber—that the Coalfields Regeneration Trust provides vital support for our communities. In enabling local people to come together to decide ways forward for their areas, the trust is without doubt targeting its help at where it is most needed. I take this opportunity to thank the trust for everything that it has done in Midlothian North and Musselburgh to date, and I look forward to its helping in other similar regions in Scotland, and to working with it in the years to come.

13:13

Claire Baker (Mid Scotland and Fife) (Lab): I congratulate Christine Grahame on securing the debate.

The Coalfields Regeneration Trust is situated in Alloa in my region, and I know how much excellent work it has done over the past 15 years. I grew up in Kelty, which is a coalfields village in which much of the community was employed by the National Coal Board either directly in the mines or, as my dad was, in the workshops in Cowdenbeath. It was an industry in which people's livelihoods became a political battleground, and its running down devastated many communities across my region.

The identities of the villages were determined by their mines and the employment that they provided; there was high employment and a civic society that was supported by the mining families. Indeed, last week, I held an event in Lochgelly miners institute to recognise Jennie Lee MP, and I

chose that venue not only because of its historical relevance to the area but because it shows how that legacy can be relevant to the present day.

The Coalfields Regeneration Trust was established 15 years ago to focus on regenerating former mining communities. Some people might think that the mining industry declined many years ago and that times have moved on, and that there is therefore no need for such a trust. However, 30 years after the decline of the coal industry, there is a continuing legacy of poverty and deprivation—a set of circumstances that have in recent years been added to by further pressure. There are still worse levels of deprivation in coalfield communities than in other areas, and the trust reports that Fife has—by some margin—the largest and most pronounced concentration of coalfield deprivation in Scotland. That is one of the reasons why I welcomed the fairer Fife commission report that was published in Fife last week; the trust must be one of the key delivery partners.

I support Neil Findlay's earlier comments about the declining budget of the CRT. With a fairly modest income of £24 million, the trust has supported an employability agenda and has focused on people's health and wellbeing, offering targeted grassroots support for communities and their families. Pauline Douglas and her team are approachable, positive and really understand the communities that they work in. There is the only organisation that has an exclusive focus on coalfields communities, and it is more than just a funder, as it works in partnership with people and builds capacity in communities.

The briefing from the trust highlights so many positive examples of the work that it does that it is hard to choose which to highlight. I particularly liked the wheels to work project, which is a simple project that leases mopeds and scooters to young people in rural Fife who have difficulty getting to work, training or education. It provides a simple solution to the problem, but it is one that also develops self-respect and motivation because there is a specific long-term aim, such as gaining a driving licence, and there is also the option of buying the vehicle at the end of the loan period. It is a clever little scheme that reflects the ethos of the trust: finding solutions, empowering people to change their lives and giving confidence and responsibility.

I spoke to the trust recently at my party conference. I was due to speak on a panel for the Electoral Reform Society on participative democracy, and fortuitously spoke to people from the trust beforehand. They told me about their coalfields capacity-building programme, which works to build community engagement, enthusiasm, partnership working and community

ownership of communities' future. We talked in particular about the coalfields community action plan, which engages communities in community action planning, and, as Christine Grahame mentioned, there is a small participatory budget fund, which offers grants to groups and projects that take action based on the plan. The trust recently ran that process in Methil and had a really positive level of community engagement.

Communities that live with poverty often feel remote from decision making, or feel as if their votes at the ballot box do not change their lives or communities much. Projects such as those that are run by the CRT give communities power, control and participation in decision making, and bring people together to improve their community. For every £1 that is invested through participatory budgeting, an additional £5 of external funding has been secured. Involvement in the process has been high; there has been real enthusiasm from communities.

Scotland needs a healthy and engaged democracy, so I commend the Coalfields Regeneration Trust for taking that approach, and for all the work that it does across our coalfield communities in Mid Scotland and Fife.

13:17

John Wilson (Central Scotland) (Ind): I congratulate Christine Grahame on securing the debate. I also pay tribute to a late member of Parliament, Helen Eadie, who initiated a number of debates on the Coalfields Regeneration Trust because of the issues that we have always known about. Neil Findlay hit the nail on the head when he said that the debates always seem to focus on funding, and do not just congratulate the trust on the work that it has been doing in communities across Scotland.

I draw members' attention to my entry in the register of members' interests. The reasons for that will become apparent in two minutes.

The work of the Coalfields Regeneration Trust has been important, vital and essential for many communities across Scotland—former mining communities that were left in a bad situation when the industry was killed off, and they found themselves in deep depression, as well as deprivation. What led to establishment of the CRT in 1999 was identification of the problems that were facing communities across Scotland that had been left without support or structures.

In the time that it has been in existence, the trust has done a lot of work. I can speak from practical experience of seeing the work that has been done in Coatbridge and Chryston—your constituency, Presiding Officer—which I know well. I have seen work that has been done in

Bedlay in Annathill; Auchengeich in Moodiesburn; and Cardowan in Stepps—although I should apologise to the people of Cardowan for saying that it is in Stepps.

The work that is being done in Moodiesburn reflects the work that other members have mentioned in reference to the community capacity-building programme. Three or four years ago, the Coalfields Regeneration Trust went into Moodiesburn, worked with the community there and developed a community plan. It surveyed the community and identified what its priorities were—not the priorities of the council or the Government—and put those in a document that was presented to the local authority, telling it what the people wanted to see happening in their community.

Last Saturday, while many members might have been out shopping in the wind and rain, I was participating in an event in my village of Glenboig. We had a Santa's grotto and, while we were switching on the Christmas lights, the members of the community who are involved in the capacity building in Glenboig decided to survey the residents of Glenboig on how to use the £20,000 that has been granted to the community, and what groups should be prioritised to receive that funding. The group that has been established to look at that decided to consult the wider community on that.

About three weeks ago, I also received through the door a survey form from the local community development trust, asking what the issues are for Glenboig. The forms also formed part of Saturday afternoon's consultation. People were asked, "Do you agree that these are the priorities for our communities?" and, "Do you agree that this is what should be taken forward?" Alex Rowley rightly made the point that this is about community capacity building from the grass roots up; it is not about organisations that are formed externally. The Coalfields Regeneration Trust has merely facilitated the communities' coming together to identify their own issues.

I could go on, but I will end by making the plea—as have other members—that the minister give us, in his summing-up speech, a guarantee that funding for the Coalfields Regeneration Trust will continue. Not only that, but can the minister guarantee that we will see an increase in that funding, to allow the Coalfields Regeneration Trust not only to continue the work that it has been doing but to enhance what it does in many communities throughout Scotland, so that we can all get the benefit of understanding what community empowerment from the grass roots up is about?

13:22

The Minister for Local Government and Community Empowerment (Marco Biagi):

Whenever we have debates about anything that is connected to Scotland's traditional industries, whether it is steelworking, shipbuilding—which is what the Scottish side of my family was involved in—or coal mining, there is a real poignancy and sense of identity running to the heart of the issues that we are talking about. It must be accepted that that is, in part, a result of the shared suffering from the legacies of Governments past. Looking to the future, I commend the Coalfields Regeneration Trust for the sense of mission that comes from that identity, which is a real mission to improve the quality of life of the people who live in Scotland's former mining communities.

Since 1999, the Scottish Government has been the sole funder of the Coalfields Regeneration Trust's activities in Scotland, which demonstrates the cross-party commitment that exists to regeneration of our coalfield communities, in contrast to the United Kingdom Government's decision to end its funding of CRT England last year. Our continued support for the work of the trust in delivering community-led regeneration activities delivers benefits to some of the most disadvantaged communities in Scotland. Our vision is a Scotland in which our most disadvantaged communities are supported and are in the driving seat of the efforts to solve problems that they know all too well because they are the people who live with them every day.

The Scottish Government's regeneration strategy and programme for government highlight the importance of community-led efforts and community empowerment. Our fairer Scotland programme to develop a social justice action plan shows the importance that we attach to direct public involvement in decision making and building strategies. We recognise that community anchor organisations, in particular, can drive change across everything—local environmental issues, local economic growth, unemployment, and the arts and cultural activity. Crucially, they deliver what local people know will make a difference.

In 2015-16, we substantially expanded resources to support community-led activity across Scotland. By investing £20 million through our empowering communities fund, we are funding action, including by the CRT, to tackle poverty and inequality in Scottish society.

The trust has invested more than £21 million in the Scottish coalfields to create jobs, help people into work, support new businesses and social enterprises, encourage healthier lifestyles and help groups at the heart of their communities to become successful and self-sustaining. Anything that members can name, it has done. Over the

past two years, we have provided funding of £1.5 million to the CRT to help it to deliver its programmes in coalfield communities.

We continue to learn from the trust and from other organisations that support community-led regeneration—the initiatives that work best at local level. I want to draw attention to one such initiative that has been highlighted: the coalfields community futures programme. It targets ex-mining communities that are suffering multiple problems but have not previously benefited from funding from the trust or other grant makers. The programme works at very local level—it works with residents and local groups to identify the community priorities by delivering a community action plan, using the residents as researchers.

By making use of a small fund and, crucially, by using participatory budgeting, residents make decisions on improvements in their communities. Capacity building is needed and provided by the trust, which develops new community skills that will, we hope, lead to the establishment of community anchor organisations that provide a focus for on-going activity. I saw the model just last month in Prestonpans; I cannot commend it highly enough.

It is not enough to do things to communities that we believe are needed—we must have faith in the spirit of communities and empower them to do the things that they know are needed. The Community Empowerment (Scotland) Act 2015 is important in that regard, and will help to support more initiatives such as the Coalfields Regeneration Trust. The 2015 act can and must provide new vigour if it is to work; it must provide new life and new routes for communities to take to ensure that their ambitions can be realised.

Participatory budgeting—or PB—like that which is done by the CRT, is a massive opportunity to ensure that decisions are better made not just because they are being made by people at the front line, but because people feel ownership of them. I totally agree with Claire Baker that communities must be re-engaged to participate in decision making of all kinds. That is about community empowerment putting its money where its mouth is.

I am an ardent supporter of PB and the Scottish Government is supporting—and stepping up—efforts to build capacity and understanding of PB across the country. I recommend the pbscotland.scot website to anyone who is interested in that work.

Last month in Prestonpans town hall, I met so many people who were enthusiastically casting a vote for their favourite projects—local residents were securing funding directly. It is not only about days like that, but about the work, the ideas and

the connections that the process generates, and how it brings individuals and groups together and the positive energy that that creates.

The Scottish Government will continue to support community-led regeneration in our coalfield communities. I repeat that the CRT's work has many aspects, which I hope others will look to and emulate. Looking to the future, we will keep working with the CRT to help it to develop further and enable it to build its strong profile in ex-coalfield communities. The trust's staff in Scotland are working with Scottish Government staff on how initiatives such as participatory budgeting can be rolled out more widely alongside—here is the jargon—outcomes-based monitoring and community-led regeneration. We need all that to help to reverse the decline that our former coalfield communities have experienced, and to find ways to bring communities forward and up.

I add my thanks to the Coalfields Regeneration Trust for all its amazing work in our former coalfield communities. That vital work makes a difference, because it is embedded in the priorities of the communities. It is a model example of community empowerment and the CRT is to be congratulated and, to be frank, learned from.

13:29

Meeting suspended.

14:30

*On resuming—***Business Motion**

The Deputy Presiding Officer (Elaine Smith): Good afternoon. The first item of business this afternoon is consideration of business motion S4M-15121, in the name of Joe FitzPatrick, on behalf of the Parliamentary Bureau, setting out a timetable for stage 3 consideration of the Inquiries into Fatal Accidents and Sudden Deaths etc (Scotland) Bill.

Motion moved,

That the Parliament agrees that, during stage 3 of the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Bill, debate on groups of amendments shall, subject to Rule 9.8.4A, be brought to a conclusion by the time limit indicated, that time limit being calculated from when the stage begins and excluding any periods when other business is under consideration or when a meeting of the Parliament is suspended (other than a suspension following the first division in the stage being called) or otherwise not in progress:

Groups 1 to 2: 35 minutes.

Groups 3 to 5: 1 hour.—[*Joe FitzPatrick.*]*Motion agreed to.***Common Agricultural Policy
(Payments)****The Deputy Presiding Officer (Elaine Smith):**

The next item of business is a statement by Richard Lochhead on an update on common agricultural policy payments. The cabinet secretary will take questions at the end of his statement. There should therefore be no interventions or interruptions.

14:31

The Cabinet Secretary for Rural Affairs, Food and Environment (Richard Lochhead):

I am pleased to update the Parliament on our progress towards making 2015 payments under pillar 1 of the new common agricultural policy. However, before I do so, I will touch briefly on two immediate issues that are affecting farmers in Scotland.

First, the Forth road bridge closure is having an impact on some farmers and on the wider food and drink sector. The Government was quick to contact the animal feed sector, the whisky sector and other relevant sectors. As members are aware, we secured an immediate relaxation of driver hours, which has been helpful to those sectors.

We have also been working with the industry to help to improve contingency planning. For example, we understand that some livestock units get feed deliveries only when stocks get low, with no contingency in place. That is clearly too risky, so we have been working with stakeholders to help to ensure that they are better prepared.

We will keep in touch with the industry to monitor the impact of the situation and we will seek to resolve as quickly as possible any problems that arise.

The second immediate issue is the flooding that followed storm Desmond over last weekend. Naturally, the Government's immediate focus was on the families and businesses who were flooded out, and my colleague Aileen McLeod has had an intense focus on the issues in that regard.

We must also be conscious of the impact on our farming sector. I have had a full update from our agricultural offices, who have told me that so far the impact on the sector has, fortunately, been minimal. That has been confirmed by NFU Scotland. I will continue to pay attention to the situation.

As well as those challenges, our farmers and crofters have been facing the unfavourable market conditions with which we are all familiar and an unhelpful exchange rate during 2015. This has been a challenging year for all farmers and

crofters, which is why we have known for some time how important it is to implement the new CAP as quickly as possible.

We are talking about more than £400 million in the new basic and greening payments, coupled support schemes of £45 million for beef and £8 million for sheep, and—later on—more than £60 million that will be issued through less favoured area support scheme payments. That represents substantial support for the sector.

We knew that getting that cash out of the door would be an unprecedented task for the Government. This is the biggest CAP reform for a generation. It is the first time ever that pillars 1 and 2 have been reformed in the same year. In 2015, we will have launched nearly 20 schemes across both pillars. Nearly all those schemes are either brand new or significantly changed from the old CAP. In pillar 1, in particular, the changes are enormous.

Some changes were imposed on us by Europe, such as greening, which is proving to be a major challenge for all member states. There are also changes that we successfully negotiated with Europe, such as the Scottish clause to tackle what is known as slipper farming and fair treatment for new entrants.

There were also policy choices that we made here in Scotland, through Government and industry working closely together, with the support of most if not all parties in this Parliament. Those include the three payment regions, the five-year transition and new coupled support schemes for the beef and sheep sectors.

However, there were always going to be consequences of the decisions. In the old CAP, we had two schemes in pillar 1—the single farm payment and the Scottish beef scheme—both of which applied uniformly across the whole country. Today, we have six schemes in pillar 1—basic payment, greening, younger farmers top-up, mainland beef, island beef and upland sheep—every one of which involves geographic targeting. That targeting is done in three different ways across the six schemes.

We made those policy changes to tailor the new CAP to Scotland's needs. We had meeting after meeting after meeting with industry leaders. The discussions were often intense but the decisions were right and strongly supported by the industry and the Parliament. We all made those choices with our eyes wide open. It was always made clear to the industry that more complexity would have an impact on the timetable. NFU Scotland confirmed that it knew about that and accepted it.

We now have to calculate around 4 million hectares-worth of new payment entitlements, not just for 2015, but for the whole transition period up

to 2019. Some administrations will not need to do that if they made different policy choices in the past. In England, the Department for Environment, Food and Rural Affairs decided to adopt area-based payments from 2005 after the last CAP reform. That means that calculating payments in England is much easier and the English do not have to define new regions or issue new entitlements. Despite that, they still face challenges.

Here in Scotland, we have to allocate around 400,000 fields into the three payment regions for the basic payment part of pillar 1. Thankfully that work is virtually complete, but it has been a major undertaking. Meanwhile, our information technology teams have been writing millions of lines of new computer code to implement this complex new policy within the tight timetable imposed by the EU.

So where are we, as of today? On 17 November, I gave the Rural Affairs, Climate Change and Environment Committee a written update. I said that we aim to start payments with a first payment run that should cover around a quarter of claimants. I said that the first payments should begin arriving by the end of December, the majority will arrive in January and all farmers should receive their first instalment in March and the balance in April. I also said that the first instalment payment would be at least 70 per cent. I confirm today that we are on track for that start date for payments.

The first payment run to approximately 25 per cent of farmers will get under way before Christmas, with payments beginning to arrive in farmers' accounts before the new year.

I know that everyone will be keen to know when his or her payment will be made. The answer to this is the same under the new CAP as it was under the old CAP because it depends on each individual case. Straightforward cases, where there has been little or no change from last year, should need less processing than others. If a case is more complex, or if it is one of the small percentage that we have had to inspect, processing will take longer. In some cases, the European rules require us to contact the farmer for more information. In that scenario, I urge farmers to respond quickly, so that we can get on with processing their claim. I have heard stories about how we have written to farmers two or three times and are yet to hear back so that we can get on with processing their claim and ensuring that we have accurate information.

Farmers and crofters are also keen to know the value of their entitlements under the new CAP. As required by Europe, by the end of the year we will issue to farmers illustration letters, setting out the number and value of claimed entitlements for

every year from 2015 to 2019. I must emphasise that this will only be an illustration, as required by Europe, and will not necessarily be the actual payments. Under EU rules we must then confirm the final value of entitlements, after all claims have been processed and by 1 April. In other words, the illustrations that Europe requires will be out by the end of this year and the final values will be out by 1 April, so that farmers will have full visibility of their five-year transition. I know that people are keen to get this information but, here too, the more complex cases might have to wait a little longer than others. If that causes problems for any individual farmer or crofter, they should contact their area office, or they can call our new helpline—0300 300 2222—which opened last week and will be open office hours. Alex Johnstone need not worry; it is now part of the *Official Report*. It will help customers get to grips with the complexities of new CAP.

We also sent an explanatory leaflet to all farmers in early December, so that they know what to expect over coming months. We have also been in contact with the banks—I have met them all personally—to encourage them to help the industry through the coming months.

This is undoubtedly a difficult time and I thank all our farmers and crofters for their patience. We know how important these payments are. Although, as I said, it is an unprecedented task for the Government, we must make every effort to ensure that we get it right. We cannot have Scottish farmers facing the chaos of incorrect payments or the loss of funding through EU disallowance that their counterparts elsewhere have faced in the past.

In previous years, the Scottish Government has had an exceptional record of making CAP payments, but 2015 was always going to be different. However, no one should doubt the Government's determination to deliver for the agricultural community.

The £440 million of support that will be issued in the coming months through pillar 1 of the new CAP alone is vital to food production, our environment, our rural communities and the Scottish economy. I believe that most, if not all, parties in this Parliament agree with me and the industry that, even if it meant a different timetable, it was a price worth paying to ensure that payments are as targeted and effective as we can make them.

On that note, I urge the Parliament to support the Government's work to make these much-needed payments, under this jointly-designed policy, as quickly as we can.

The Deputy Presiding Officer: The cabinet secretary will now take questions on the issues

raised in his statement. I intend to allow around 20 minutes for questions, after which we will need to move to the next item of business.

Sarah Boyack (Lothian) (Lab): I thank the cabinet secretary for notice of his statement. I agree that we all knew that CAP payments would be complex, but the cabinet secretary's job is to provide leadership to his department to ensure that the system works. He made no reference to the fact that the computer system that was used was spectacularly overcomplex and overdesigned and completely unreliable. There was systemic failure, which has contributed to delays. Farmers, and the thousands of rural jobs and communities that rely on them, deserve better. From repeated freedom of information requests, I know just how chaotic the whole system has been.

I previously asked the cabinet secretary the following questions. How many farms are still to be visited? When will individual farmers know how much they can expect to receive? When will they get those payments? That is still not clear from the statement.

We are well into the payment window and it is three years since the Scottish Government designed its business case. Will farmers know, intuitively, whether their case is straightforward or complex? When will they find out when they will get their payments? Will the cabinet secretary compensate those farmers for the cost of loans taken out as a direct result of the administrative failure of the cabinet secretary and his department?

It feels as if there has been an abdication of responsibility today, and the cabinet secretary's statement disappoints once again. There is still uncertainty and not even a hint of an apology. Our farmers and those whose livelihoods depend on them deserve better.

Richard Lochhead: I say to Sarah Boyack that we are not well into the payment window. This is 10 December and the payment window is several months long.

We had an excellent payment record under the previous CAP. The payment window opened on 1 December and we managed to get the majority of payments out pretty quickly after that. However, the old policy is radically different from the policy that we are dealing with at the moment.

I am happy to acknowledge that there have been issues with the IT system. The system is very complex, but it is dealing with a very complex policy. If we had a simple policy, the IT system would be simpler and we would perhaps not have had as many difficulties as we have had. However, because we have an extremely complex policy, it has led to issues with the IT system. If there are lessons to be learned, we will have to learn them.

Sarah Boyack and others will have seen what other Administrations went through when they had to deal with similar challenges and a similar transitional period. That was particularly the case for the United Kingdom Government; when it moved from historical payments to area payments in 2005, I think that only 24 per cent of recipients in England had their payment by April.

In 2015, Scotland is not only moving from historical to area payments. It is introducing three payment regions, new coupled schemes and various other new measures—all at the same time and at the request of many political parties in the chamber and the wider agricultural sector.

I thank the industry for its forbearance and patience. I have met many farmers over the past two or three weeks alone, including 70 on Monday evening in my constituency, and I assure members that the vast majority of farmers who I have spoken to are very reasonable about this. We have to accept the key point, which is that hundreds of millions of pounds of support will make its way to Scotland's farming community in the coming weeks and months.

Alex Fergusson (Galloway and West Dumfries) (Con): I thank the cabinet secretary for advance sight of his statement. In October 2014, the NFUS issued a press release that welcomed the fact that the Scottish Government had made the growing of nitrogen-fixing crops a viable option for Scottish farmers. It said:

"Importantly, the rules will now allow producers to grow only one crop, rather than two, in 2015 to qualify".

Now, just 14 months later, the NFUS is—with considerable justification—accusing the Scottish Government of gold plating greening proposals, including an insistence that two nitrogen-fixing crops be grown in an ecological focus area.

Why is the cabinet secretary gold plating so much in the greening proposals, to the ultimate detriment of Scotland's arable sector? What action is he taking to address the concerns that have been raised, as he has pledged to do?

I have no doubt that the rural payments and inspections division staff are doing everything possible to get basic payments out as soon as possible, but what impact will that human resource effort have on the timing of future payments under schemes such as the less favoured area support scheme, the beef calf scheme and the agri-environment scheme? Can the cabinet secretary also confirm that, despite a 1 January deadline for SRDP applications to be approved, not one application has yet been approved?

Richard Lochhead: Alex Fergusson asked a number of questions. First, I will touch on the nitrogen-fixing crops issue, which is topical, as he

rightly said. The greening measures were largely imposed on Scotland through the new common agricultural policy and Scotland had to take some decisions on them.

One of the decisions that we had to take was to define what would be allowed in the ecological focus areas, where 5 per cent of the land is put aside for environmental purposes. Many stakeholders wanted no nitrogen-fixing crops to be allowed as part of that, whereas the NFUS and some others wanted all nitrogen-fixing crops to be allowed as part of it. The compromise that I proposed—and which was agreed to—was that nitrogen-fixing crops could be allowed, but with certain management conditions to contribute to and protect the environment. That is where we are with that.

However, Alex Fergusson is right that there are wider issues with the greening measures in the new policy. Over the past year or two, the Government has been calling loudly for a review of greening to take place at the European level. That review will take place in 2016 and we will contribute to it to ensure that the greening measures are appropriate to Scottish circumstances.

There will be an impact on other payments, because the priority has been to get the basic payments out of the door. That is what we agreed with the industry. The timetable for the other payments was always going to be different, as some of them are new. We did not have a coupled support scheme for sheep before—that will happen for the first time in 2016—so we have to get that right and get it out of the door.

I will keep Parliament informed about those timetables. I want to minimise the impact on them and, if the member has any other questions—he asked a lot of questions—he should write to me.

The Deputy Presiding Officer: I have a number of requests to speak. Unless questions are short, with answers to match, I am afraid that we will not get everyone in.

Graeme Dey (Angus South) (SNP): When the cabinet secretary addressed the subject at topical question time on 24 November, he indicated that about 1,300 farm inspections were still to be carried out. Will he update members on what subsequent progress has been made and indicate when the process is expected to be concluded?

Richard Lochhead: One of the EU's bureaucratic demands is that we have to start all 1,300 inspections across all parts of Scotland before we can make any payments to any farmers. We are on the brink of having achieved that and that will be the case before the end of the year, which will be helpful. That is the feedback that we are receiving from area offices around the country,

so I hope that, in a matter of days, all 1,300 inspections will have started, which will enable next year's payments to get under way in full. We hope to achieve that as quickly as possible.

Claudia Beamish (South Scotland) (Lab): In his statement, the cabinet secretary said:

"We all made those choices with our eyes wide open"

and added:

"I urge the Parliament to support the Government's work to make these much-needed payments, under this jointly-designed policy, as quickly as we can."

Those remarks signal to me something of an abnegation of responsibility. He has listed some of the many complexities but, complexities or not, the delivery of payments is the sole responsibility of the Scottish Government and his department.

The Deputy Presiding Officer: I need a question.

Claudia Beamish: The cabinet secretary has known about the need to play catch-up for many months but has not caught up with things. Does he have any comments?

Richard Lochhead: Yes—I have plenty of comments in response to Claudia Beamish's question. First, I am just imagining what would have happened and what the conversation would have been today in the chamber if I had not taken measures to tackle slipper farming and if our vital resources were going to those who are not genuinely active farmers. The whole purpose of some of the measures that we have adopted is to suit the European framework to Scottish circumstances, because we have hill farming, lowland farming, island farming and mainland farming. If we had not tailored the system and taken advantage of the flexibility that we had to have three payment rates—three payment regions—I am sure that the other political parties would be standing up today to complain that the Scottish Government had taken the wrong decisions and that we should have taken a bit longer to get them right.

Michael Russell (Argyll and Bute) (SNP): As the cabinet secretary said, it has been a difficult year for agriculture, with problems in milk, beef, the weather and transport. However, it should have been a good year for barley growing, given the demand in the whisky industry.

When the cabinet secretary is in Europe next week to talk about greening, will he impress on the European Commission the importance of the greening issue and its impact on barley growing in my constituency? For example, on the island of Islay, there is a genuine problem in growing the small amount of barley that is required for the organic distillery, because of the new regulations. It would be immensely helpful to my constituents—

and, I believe, to the cabinet secretary's constituents, as he represents even more distilleries than I do—to make sure that that situation is changed and that the gold plating is dropped.

Richard Lochhead: Without opening up a debate as to which part of Scotland produces the best whisky, I am happy to say that I very much recognise the burden on our arable sector, and particularly the parts of it that grow barley for our Scotch whisky sector, be that in Islay, Speyside or elsewhere in Scotland. That is why I am meeting the European Commission next week to ask for further consideration to be given to the equivalence measures that we are putting forward to replace the three-crop rule as part of greening. The European Commission is saying that we can do that only if the proposal is shaped in a particular way, but that makes it completely unworkable and unattractive to the arable sector in Scotland. We would therefore be stuck with the three-crop rule, which is largely designed for the monoculture in eastern Europe and elsewhere, not Scottish circumstances.

John Lamont (Ettrick, Roxburgh and Berwickshire) (Con): I note the cabinet secretary's comments about the impact of flooding being minimal, but many Borders farms have been affected, which will simply compound the impact of the news that they will not receive full payments until April. Will the Scottish Government prioritise payments to farmers in my constituency who have suffered as a result of flood damage?

Richard Lochhead: If the member could pass me details of farmers who are affected by flooding, I would very much appreciate that. In the past couple of days, we have been doing our best to speak to local representatives and to people through the NFU, and we will continue to do that this week. If any other member has examples like Mr Lamont's, they should contact us with the details.

As for whether we can give those farmers extra help, I urge them all to contact their regional offices, but I will certainly give that some thought. I am doing that already, but John Lamont has raised a fair point. The position will all depend on the individual circumstances of the farms.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): I draw members' attention to the fact that I have a very small registered agricultural holding, but I receive no public funding for it.

The basic and greening payments process has been at the heart of what the cabinet secretary has said today, but farmers also wish to be assured that coupled support for beef and sheep and, indeed, the £60 million for less favoured

areas are also on schedule to be paid in a reasonable time.

Richard Lochhead: Stewart Stevenson is right that we have to recognise the importance of the payments other than the basic payments that will happen in the coming months. Normally, we pay the beef calf scheme in April and the less favoured area support scheme payments go out around March. I have said publicly already that some of those payments could be delayed by a few weeks, because the message that we have had from the industry is that all our efforts and resources should be focused on the basic and greening payments. However, clearly I am keen to minimise any impact on the other payments, given the fragility of some of the sectors involved and the cash-flow issues that they face.

Iain Gray (East Lothian) (Lab): The cabinet secretary mentioned in his statement speaking with the banks and encouraging them to help farmers through the coming months. We hear it reported that at least one bank has agreed to waive arrangement fees on bridging loans that farmers require because of late payments. Will he consider a scheme to compensate farmers for interest payments incurred in such circumstances?

Richard Lochhead: Every farming business in Scotland has its own business plan and business practices. I have spoken to the banks and they are relatively relaxed about the impact of the timetable for payments in Scotland. They are willing and keen to speak to any farmer who has cash-flow difficulties and they will be sympathetic. I will continue to focus my efforts on ensuring that the banks are being as co-operative as possible.

Rob Gibson (Caithness, Sutherland and Ross) (SNP): I ask the cabinet secretary whether the lowest payments to region 3 applicants, who are mainly crofters, have been complicated due to the time that has been taken to process their claims following the NFUS's insistence on a three-region model instead of a two-region model. Has that disadvantage for crofters been added to where their inby land goes along with their portion of common grazing, which has meant more inspections of their claims?

Richard Lochhead: I thank Rob Gibson for highlighting the issues facing crofting. There are some issues, which I am currently investigating. I point out that our modelling estimates that, under the new policy, the amount that crofters receive in direct payments is likely to increase from about £20 million in 2013 to about £33 million by 2019. Overall, the changes should bring a beneficial boost to payments to our crofting counties.

The reason why I support the three-region model is that crofters and farmers in general asked for measures to tackle slipper farming. I

think that we all agree that those who have the least activity should get the lowest payments and should get less than those who are more active farmers. I will continue to pay close attention to the impact on crofters in Rob Gibson's constituency and elsewhere in Scotland.

Jim Hume (South Scotland) (LD): I am grateful for advance sight of the cabinet secretary's statement. I remind members of my entry in the register of members' interests.

We have been waiting for months for clarity on CAP distribution. There has been frustration and worry in rural Scotland, and there is no doubt that the Government's delay in payments will have serious repercussions for agriculture in Scotland.

The cabinet secretary noted in his statement that the new helpline was launched last week to help farmers to get to grips with the reformed CAP, but I have been informed that some farmers who have called it have found it to be of little use.

The Deputy Presiding Officer: Mr Hume, I need a question.

Jim Hume: Will the cabinet secretary say more about who is staffing the line and what information they can provide? Will he ensure that they have the expertise that is needed to help farmers at this critical time?

Richard Lochhead: We are urging any crofter or farmer who has an issue to visit their regional office, and the feedback that I have had is that they find that immensely helpful. I hope that the helpline has been helpful. If it has not, I ask Jim Hume or anyone else to send me the details of the specific circumstances and I will certainly look into that.

I could gently remind Jim Hume that the Conservatives and the Liberal Democrats were in coalition for a few years, and at that point they were arguing for scrapping pillar 1 of the common agricultural policy. If it was up to them and they had got their way, we would not be discussing direct payments, because there would not be any.

Margaret McDougall (West Scotland) (Lab): Given the tremendous problems that farmers and land agents have had to face because of the uncertainties surrounding payment amounts and times, what does the cabinet secretary commit to do in the future to help farmers to submit forms or access their payment information when they may not have consistent broadband connections?

Richard Lochhead: The Government is engaged in rolling out broadband across Scotland, which is a big priority, particularly for my colleague who is sitting on my right-hand side, John Swinney, the Deputy First Minister. Huge sums are being invested in ensuring that our rural communities have access to online application

forms. If people are unable to access them, again, they should visit their local office, where they will get assistance with that.

I remind the Parliament that, despite all the publicity about the online issues, 65 per cent of applications for the new common agricultural policy were made online compared with 35 per cent on paper. An increasing number of applicants are using the online service, but we will certainly continue to pay close attention to that and support it.

Liz Smith (Mid Scotland and Fife) (Con): In the reforms, the Scottish Government has put a high priority on the involvement of new entrants and those who are in farming without a subsidy. What stage is the Scottish Government at with processing the new entrant grant applications?

Richard Lochhead: Different parts of the SRDP are at different stages. The agri-environment schemes are now in and they will be taken to the next stage in January. Other parts of the capital schemes, particularly that for new entrants, are under way as well. I am happy to send Liz Smith a proper update if she is looking for specific figures.

I remind the Parliament that a decision that we took in Scotland that added to the complex mix was to ensure that the new policy in Scotland catered for new entrants. One of the big flaws in the previous common agricultural policy was that new entrants were largely excluded from getting support while, ironically, inactive farmers were getting support. That was wholly unacceptable and we have managed to change it.

Roderick Campbell (North East Fife) (SNP): Reference has been made to discussions with the banks, and I know that the cabinet secretary met bank representatives on 19 December. Will he tell members anything further about those discussions?

Richard Lochhead: I can only reiterate what I said already. I met the banks personally. Stakeholders, particularly the NFUS, also met the banks. The banks are being very co-operative. If there are issues where that is not the case, I ask members to let me know. We can all take responsibility to urge our constituents who face cash-flow problems to notify their banks as soon as possible, because the banks are keen to hear from them and to help.

Jamie McGrigor (Highlands and Islands) (Con): Is the cabinet secretary aware that the Scottish Crofting Federation is warning that delays in payments to crofters could prove ruinous? What is his response to those crofters?

Richard Lochhead: My response is that the new CAP will, as I indicated, deliver a greater amount of the direct payments to our crofters, as

the new system is phased in between now and 2019. We will continue to work flat out. We have hundreds of Scottish Government officials working flat out, round the clock, to ensure that we can get the payments out as quickly as possible.

Inquiries into Fatal Accidents and Sudden Deaths etc (Scotland) Bill: Stage 3

15:02

The Deputy Presiding Officer (Elaine Smith):

The next item of business is stage 3 proceedings on the Inquiries into Fatal Accidents and Sudden Deaths etc (Scotland) Bill. To deal with amendments, members should have the bill as amended at stage 2, which is SP Bill 63A; the marshalled list, which is SP Bill 63AML; and the groupings, which is SP Bill 63AG. The division bell will sound and proceedings will be suspended for five minutes for the first division of the afternoon. The period of voting for the first division will be 30 seconds. Thereafter, I will allow a voting period of one minute for the first division after a debate. Members who wish to speak in the debate on any group of amendments should press their request-to-speak button as soon as possible after I call the group. Members should now refer to the marshalled list of amendments.

Section 2—Mandatory inquiries

The Deputy Presiding Officer: Group 1 is on mandatory inquiries: persons detained under mental health legislation. Amendment 2, in the name of the minister, is grouped with amendments 3, 4, 36, 5, 37, 38, 6, 39, 7 and 8.

The Minister for Community Safety and Legal Affairs (Paul Wheelhouse): The amendments in this group relate to mandatory fatal accident inquiries for patients detained under mental health legislation. Such inquiries were introduced at stage 2 by amendments that were lodged by Margaret Mitchell and agreed to by the Justice Committee.

Margaret Mitchell's amendments mean that there will be a mandatory fatal accident inquiry into every death of a person detained under mental health legislation, unless certain exceptions apply. The Scottish Government's amendments in the group seek to reverse the effect of Margaret Mitchell's amendments. Amendment 4 removes a redundant definition of "mental disorder", which is not referred to in the bill and which should be removed whether or not the other amendments in the group are agreed to. The definition is no longer required as it is relevant only in relation to patients receiving treatment in hospital voluntarily.

Subsequent to stage 2, several bodies wrote to the Scottish Government and MSPs to express their opposition to Margaret Mitchell's stage 2 amendments and offer their support for the reversal of those amendments at stage 3. That is

what the Government's amendments in the group seek to do.

The Royal College of Psychiatrists said:

"it is stigmatising to suggest mental health care and treatment should be subject to special scrutiny in relation to patient deaths".

The Scottish Association for Mental Health, which is a charity that supports and campaigns for people with mental health problems, says that the stage 2 amendments

"are disproportionate and could add to the distress of bereaved families".

The British Medical Association Scotland said:

"There are of course deaths which would benefit from further investigation, but it is more appropriate for the fiscal to make the decision than to have a mandatory FAI for all cases."

The amendments were not supported by the Mental Welfare Commission for Scotland, which believed that the provision was disproportionate and would not achieve the aim of national learning. Penumbra and the mental health nursing forum Scotland also expressed their opposition.

I understand members' concerns that we must ensure that proper care is given to those who are detained by the state due to their mental health problems, especially as they are some of the most vulnerable people in our society. However, I believe that the systems that are in place and the statutory review that will soon be undertaken best ensure that that will happen.

Currently, the Mental Welfare Commission for Scotland may undertake an investigation when it is alleged that a mental health patient may have been subject or exposed to ill-treatment, neglect, or some other deficiency in care or treatment.

The chief medical officer issued a formal circular to practitioners in November this year that made it mandatory for all deaths that occur while the person is subject to compulsory treatment under mental health legislation to be reported to the procurator fiscal. That ensures not only that an independent investigation can be carried out by the procurator fiscal to establish whether there is any issue of criminality but that, if there is no criminality and it is in the public interest, perhaps because of a suspicion of a deficiency in care or treatment, the Lord Advocate can hold a discretionary FAI. That demonstrates that, if no FAI is to be held, it does not mean that there has been no investigation of the death. Indeed, of the 5,500 death investigations that are carried out each year by the Crown Office and Procurator Fiscal Service, only 50 to 60 lead to an FAI. As for all the other deaths that are reported to the Crown Office, the circumstances have been explored by the procurator fiscal.

In addition, section 37 of the Mental Health (Scotland) Act 2015 requires a statutory review of the arrangements for investigating the death of a patient who was detained in hospital by virtue of the Mental Health (Care and Treatment) (Scotland) Act 2003 or the Criminal Procedure (Scotland) Act 1995, or who was admitted voluntarily to hospital for the purpose of receiving treatment for a mental disorder. That provision was inserted by an amendment that was lodged by Dr Richard Simpson and supported unanimously by the Parliament. On the instruction of the Minister for Sport, Health Improvement and Mental Health, the Scottish Government this week laid an order commencing the provision, which will come into force on 24 December. Any change to FAIs in relation to such cases would pre-empt the review, which has been and will be widely welcomed by stakeholders. Indeed, in its stage 3 briefing to MSPs, the Mental Welfare Commission considers the review to be an

“important opportunity to create a system of investigation of non-natural deaths of psychiatric patients which is proportionate, streamlined and effective.”

Although not a primary consideration of the potential impact, it is important to note that, as detailed in the supplementary financial memorandum to the bill, mandatory FAIs for detained mental health patients would effectively double the number of FAIs held per year. It would mean that one out of every two FAIs would relate to a mental health patient, which would be disproportionate and would, in my view and in the view of stakeholders, cause unnecessary distress to the families of the deceased.

I suspect that Dr Elaine Murray's amendments have been lodged to mitigate that impact, as they would mean that the Lord Advocate may decide that an inquiry is not to be held into a death, if satisfied that the death is from natural causes. Perhaps that is an acknowledgment by Dr Murray that the provision, via an exception, in Margaret Mitchell's stage 2 amendments for the Lord Advocate not to hold a mandatory FAI if there has been a Mental Welfare Commission investigation is not enough. However, amendment 37, in Dr Murray's name, could give rise to practical issues of interpretation and application. There is no definition of “natural causes”, and it also raises more questions than it answers. For example, on what basis would the Lord Advocate be satisfied that the death was from natural causes? How is the phrase “natural causes” to be defined for the purposes of the provision? The amendment could also lead to challenges, by judicial review, to the Lord Advocate's decision not to hold an FAI if, for example, the family believed that the death was not from natural causes.

For those reasons, the Government wishes to reverse Margaret Mitchell's stage 2 amendments

in order to return the bill to the original policy in respect of the treatment of mental health patients. As Dr Murray's amendments are based on Margaret Mitchell's stage 2 amendments remaining in the bill, Dr Murray has nothing to gain by pressing her amendments if those provisions are removed.

For the reasons that I have outlined, the Government opposes the amendments lodged by Elaine Murray. As the Scottish Government's position is supported by a broad range of mental health organisations that work on the front line and which represent mental health patients and those who work with and care for them—to recap, the Mental Welfare Commission for Scotland, the Royal College of Psychiatrists, BMA Scotland, Penumbra, the mental health nursing forum Scotland and Enable—I ask Elaine Murray not to move her amendments.

I move amendment 2.

Elaine Murray (Dumfriesshire) (Lab): At stage 2, the committee agreed by majority vote to amend the bill to require a mandatory fatal accident inquiry when a person who is in compulsory detention under the Mental Health (Care and Treatment) (Scotland) Act 2003 dies. The amendment accorded with Lord Cullen's recommendations in his review and had been supported during his consultation by organisations such as Enable. I also note that the deaths of patients in compulsory detention in England and Wales are subject to a coroner's inquest.

The bill as amended also allowed the Lord Advocate to make an exception where the circumstances of the death had been established through an investigation under section 11 of the 2003 act. However, it did not allow the Lord Advocate to make an exception where the death was from natural causes, which would not be subject to investigation under the 2003 act. Therefore, the death from natural causes of persons who had been compulsorily detained would always be subject to a mandatory inquiry without any exception, which could be unnecessary and distressing to friends and family.

Amendment 37 would enable the Lord Advocate to make an exception for deaths from natural causes. Two thirds of people who die in compulsory detention die of natural causes, and there should be no requirement to conduct an FAI into those deaths.

However, since the bill was amended, we have received representations from a number of professional organisations and, crucially, organisations that represent people with mental health conditions and their families that urge us to remove the provisions in question. The Mental Welfare Commission believes that the priority

should be to establish the review of the arrangements for investigating the deaths of detained patients and that legislating at this stage would pre-empt the results of that review.

Carer representatives from the Royal College of Psychiatrists in Scotland advised that the delays involved in the FAI process would have a “significant and negative” impact on bereaved carers. Penumbra agrees with the views of the MWC and the Royal College of Psychiatrists. Enable made the original submission to Lord Cullen, but its briefing, which was sent to us yesterday, was ambiguous, so I contacted its policy officer to clarify its position. She advised me by email that Enable has accepted the Government’s position on the amendments, provided that there is a firm commitment that the review into the investigation of deaths of detained patients that is required by section 37 of the Mental Health (Scotland) Act 2015 is progressed as a matter of urgency. As the minister has said, that review is the result of an amendment that was lodged by my colleague Richard Simpson and unanimously supported by Parliament.

The Minister for Sport, Health Improvement and Mental Health wrote to the chair of the Health and Sport Committee, Duncan McNeil, earlier this week to advise that he intended to lay an order yesterday, which will come into force on 24 December and will clarify the deadline for the review’s completion. If the minister can confirm that that order has been laid and can advise us of the deadline for the review’s completion, I will consider that the stage 2 amendments have made an important contribution to the debate and to the acceleration of the review.

The Minister for Sport, Health Improvement and Mental Health (Jamie Hepburn): I confirm that I have laid that order. As Paul Wheelhouse said, it will come into effect on 24 December this year. The provision that the Parliament unanimously legislated for is that a review should take place within three years, but my clear commitment to the chamber is that that review should commence as soon as possible.

The Deputy Presiding Officer: Dr Murray, could you come to a close, please?

Elaine Murray: In light of those assurances, I will not press my amendments, and Labour will support the Government amendments that remove the stage 2 amendments.

The Deputy Presiding Officer: Three members have requested to speak. I ask for contributions to be kept as short as possible.

Margaret Mitchell (Central Scotland) (Con): The reality is that, if amendment 3 is agreed to, adults in the mental health system who are detained on a compulsory basis will have fewer

human rights than criminals in custody do. I remain of the view, which was originally stated by Enable, that deaths of people who are detained under the Mental Health (Care and Treatment) (Scotland) Act 2003 should be included in the mandatory category. Individuals who have been deprived of their liberty in the mental health system should have the same protection as those who are detained in a prison or a police cell.

Roderick Campbell (North East Fife) (SNP): Since we heard evidence on this matter at stage 1, things have moved on. At stage 1, the Scottish Human Rights Commission said that there was a gap in relation to the protection of the right to life for those in mental health detention. Indeed, the Mental Welfare Commission, while opposing mandatory inquiries, also commented that it thought that the current system was inadequate.

We have moved on, with the review under section 37 of the 2015 act, the order that Jamie Hepburn has referred to and the chief medical officer’s circular. In the light of all that and of all that has been said, we should be content to support the Government’s amendment.

A final point in relation to mandatory inquiries is that we should perhaps take account of the fact that, in the House of Commons, the Labour MP for Stockport is seeking to scrap the chief coroner’s current guidance that there should automatically be an inquest into the deaths of people who are subject to deprivation of liberty safeguards or are in state detention, because of the distress that that causes to many families of sufferers of dementia.

Alison McInnes (North East Scotland) (LD): Margaret Mitchell’s stage 2 amendment that required a mandatory FAI in relation to the death of any patient who dies while receiving treatment for a mental disorder was further amended by my amendment to remove the reference to voluntary patients. As the minister said, the bill as it now stands provides for a mandatory FAI for any patient who dies while detained under the Mental Health (Care and Treatment) (Scotland) Act 2003, and it provides an opt-out for the Lord Advocate. In effect, that flipped the previous arrangements, whereby the Lord Advocate could, if he considered it appropriate, order an FAI. I supported that move at stage 2, as the Scottish Human Rights Commission had advised that steps needed to be taken to ensure that the systems of investigation met the requirements of article 2 of the ECHR and to remedy the current gaps and confusion in the system.

15:15

I hope that we can all agree that, when the state has responsibility for someone’s care and health, there should be a full and independent process to

ascertain the reason for their death. Nevertheless, I acknowledge that there is disagreement over whether the FAI route is the right process, and I have further reflected on the evidence that was submitted by SAMH, the BMA, the Royal College of Psychiatrists and the Mental Welfare Commission, which all oppose the mandatory FAI approach, arguing that it is disproportionate, that it adds significantly to workload and, perhaps most compelling for me, that it risks stigmatisation and would increase the distress of bereaved families.

On balance, I have concluded that there is a more proportionate and less distressing way to proceed that involves reform of the whole system of notifications and investigation instead of focusing solely on FAIs. I will, therefore, support the Government's amendments, which will remove the provision. However, today, when Jeremy Hunt is at Westminster saying that he is profoundly shocked by the failure to investigate the unexpected deaths of mental health patients in a particular national health service trust in England, we cannot be complacent. Therefore, in supporting the amendments, I urge the minister to lose no time in proceeding with the review that was agreed to in the Mental Health (Scotland) Act 2015, and I ask him to pay particular heed to the view of SAMH that there is a particular issue relating to suicides that happen while people are in care.

The Deputy Presiding Officer: I did ask members to be brief.

John Finnie (Highlands and Islands) (Ind): I supported Margaret Mitchell's position at stage 2. However, like other members, particularly Elaine Murray and Alison McInnes, I have heard compelling evidence not only from the practitioners but from those who support the people who are in these circumstances. Therefore, I shall support the Government's position today.

Paul Wheelhouse: I will keep this brief, because I am conscious of the time. Members have raised the issue of human rights, and I thank Alison McInnes, John Finnie and Elaine Murray for their responses.

The chief medical officer's circular and the Crown Office guidance on reporting deaths to the procurator fiscal have been issued so that the deaths of detained patients can be independently investigated in accordance with article 2 of the ECHR. That strengthens the realisation in Scotland of the right to life that is enshrined in that article. The longstanding Scottish tradition of Crown discretion is well suited to the requirements of European law. Nevertheless, I take on board Alison McInnes's point, and the minister has indicated that the review that is required by section 37 of the Mental Health (Scotland) Act 2015 will look at the matter more comprehensively.

The Deputy Presiding Officer: The question is, that amendment 2 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division. As it is the first division of the stage and this afternoon, I will suspend the meeting for five minutes. Thereafter, there will be a 30-second division.

15:17

Meeting suspended.

15:22

On resuming—

The Deputy Presiding Officer: We proceed with the division on amendment 2.

For

Adam, George (Paisley) (SNP)
 Adamson, Clare (Central Scotland) (SNP)
 Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
 Allard, Christian (North East Scotland) (SNP)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Beamish, Claudia (South Scotland) (Lab)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Biagi, Marco (Edinburgh Central) (SNP)
 Bibby, Neil (West Scotland) (Lab)
 Boyack, Sarah (Lothian) (Lab)
 Brodie, Chic (South Scotland) (SNP)
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)
 Burgess, Margaret (Cunninghame South) (SNP)
 Campbell, Aileen (Clydesdale) (SNP)
 Campbell, Roderick (North East Fife) (SNP)
 Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
 Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
 Constance, Angela (Almond Valley) (SNP)
 Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
 Dey, Graeme (Angus South) (SNP)
 Don, Nigel (Angus North and Mearns) (SNP)
 Doris, Bob (Glasgow) (SNP)
 Dornan, James (Glasgow Cathcart) (SNP)
 Dugdale, Kezia (Lothian) (Lab)
 Eadie, Jim (Edinburgh Southern) (SNP)
 Ewing, Annabelle (Mid Scotland and Fife) (SNP)
 Ewing, Fergus (Inverness and Nairn) (SNP)
 Fabiani, Linda (East Kilbride) (SNP)
 Fee, Mary (West Scotland) (Lab)
 Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
 Findlay, Neil (Lothian) (Lab)
 Finnie, John (Highlands and Islands) (Ind)
 FitzPatrick, Joe (Dundee City West) (SNP)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
 Hilton, Cara (Dunfermline) (Lab)
 Hume, Jim (South Scotland) (LD)
 Hyslop, Fiona (Linlithgow) (SNP)
 Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
 Johnstone, Alison (Lothian) (Green)
 Keir, Colin (Edinburgh Western) (SNP)

Kidd, Bill (Glasgow Anniesland) (SNP)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Lochhead, Richard (Moray) (SNP)
 Lyle, Richard (Central Scotland) (SNP)
 MacAskill, Kenny (Edinburgh Eastern) (SNP)
 MacDonald, Angus (Falkirk East) (SNP)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 Macintosh, Ken (Eastwood) (Lab)
 Mackay, Derek (Renfrewshire North and West) (SNP)
 MacKenzie, Mike (Highlands and Islands) (SNP)
 Malik, Hanzala (Glasgow) (Lab)
 Mason, John (Glasgow Shettleston) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 Maxwell, Stewart (West Scotland) (SNP)
 McAlpine, Joan (South Scotland) (SNP)
 McArthur, Liam (Orkney Islands) (LD)
 McCulloch, Margaret (Central Scotland) (Lab)
 McDonald, Mark (Aberdeen Donside) (SNP)
 McDougall, Margaret (West Scotland) (Lab)
 McInnes, Alison (North East Scotland) (LD)
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
 McLeod, Aileen (South Scotland) (SNP)
 McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
 McMahan, Michael (Uddingston and Bellshill) (Lab)
 McMahan, Siobhan (Central Scotland) (Lab)
 McMillan, Stuart (West Scotland) (SNP)
 McTaggart, Anne (Glasgow) (Lab)
 Murray, Elaine (Dumfriesshire) (Lab)
 Neil, Alex (Airdrie and Shotts) (SNP)
 Paterson, Gil (Clydebank and Milngavie) (SNP)
 Pearson, Graeme (South Scotland) (Lab)
 Pentland, John (Motherwell and Wishaw) (Lab)
 Rennie, Willie (Mid Scotland and Fife) (LD)
 Robertson, Dennis (Aberdeenshire West) (SNP)
 Robison, Shona (Dundee City East) (SNP)
 Salmond, Alex (Aberdeenshire East) (SNP)
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Stewart, David (Highlands and Islands) (Lab)
 Stewart, Kevin (Aberdeen Central) (SNP)
 Sturgeon, Nicola (Glasgow Southside) (SNP)
 Swinney, John (Perthshire North) (SNP)
 Urquhart, Jean (Highlands and Islands) (Ind)
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
 Wheelhouse, Paul (South Scotland) (SNP)
 White, Sandra (Glasgow Kelvin) (SNP)
 Wilson, John (Central Scotland) (Ind)
 Yousaf, Humza (Glasgow) (SNP)

Against

Brown, Gavin (Lothian) (Con)
 Buchanan, Cameron (Lothian) (Con)
 Carlaw, Jackson (West Scotland) (Con)
 Davidson, Ruth (Glasgow) (Con)
 Fergusson, Alex (Galloway and West Dumfries) (Con)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Goldie, Annabel (West Scotland) (Con)
 Johnstone, Alex (North East Scotland) (Con)
 Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
 McGrigor, Jamie (Highlands and Islands) (Con)
 Milne, Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Scott, John (Ayr) (Con)
 Smith, Liz (Mid Scotland and Fife) (Con)

The Deputy Presiding Officer: The result of the division is: For 94, Against 14, Abstentions 0.

Amendment 2 agreed to.

Amendment 3 moved—[Paul Wheelhouse].

The Deputy Presiding Officer: The question is, that amendment 3 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Adam, George (Paisley) (SNP)
 Adamson, Clare (Central Scotland) (SNP)
 Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
 Allard, Christian (North East Scotland) (SNP)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Beamish, Claudia (South Scotland) (Lab)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Biagi, Marco (Edinburgh Central) (SNP)
 Bibby, Neil (West Scotland) (Lab)
 Boyack, Sarah (Lothian) (Lab)
 Brodie, Chic (South Scotland) (SNP)
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)
 Burgess, Margaret (Cunninghame South) (SNP)
 Campbell, Aileen (Clydesdale) (SNP)
 Campbell, Roderick (North East Fife) (SNP)
 Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
 Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
 Constance, Angela (Almond Valley) (SNP)
 Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
 Dey, Graeme (Angus South) (SNP)
 Don, Nigel (Angus North and Mearns) (SNP)
 Doris, Bob (Glasgow) (SNP)
 Dornan, James (Glasgow Cathcart) (SNP)
 Dugdale, Kezia (Lothian) (Lab)
 Eadie, Jim (Edinburgh Southern) (SNP)
 Ewing, Annabelle (Mid Scotland and Fife) (SNP)
 Ewing, Fergus (Inverness and Nairn) (SNP)
 Fabiani, Linda (East Kilbride) (SNP)
 Fee, Mary (West Scotland) (Lab)
 Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
 Findlay, Neil (Lothian) (Lab)
 Finnie, John (Highlands and Islands) (Ind)
 FitzPatrick, Joe (Dundee City West) (SNP)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
 Hilton, Cara (Dunfermline) (Lab)
 Hume, Jim (South Scotland) (LD)
 Hyslop, Fiona (Linlithgow) (SNP)
 Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
 Johnstone, Alison (Lothian) (Green)
 Keir, Colin (Edinburgh Western) (SNP)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Lochhead, Richard (Moray) (SNP)
 Lyle, Richard (Central Scotland) (SNP)
 MacAskill, Kenny (Edinburgh Eastern) (SNP)
 MacDonald, Angus (Falkirk East) (SNP)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 Macintosh, Ken (Eastwood) (Lab)
 Mackay, Derek (Renfrewshire North and West) (SNP)
 MacKenzie, Mike (Highlands and Islands) (SNP)
 Malik, Hanzala (Glasgow) (Lab)
 Mason, John (Glasgow Shettleston) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 Maxwell, Stewart (West Scotland) (SNP)
 McAlpine, Joan (South Scotland) (SNP)

McArthur, Liam (Orkney Islands) (LD)
 McCulloch, Margaret (Central Scotland) (Lab)
 McDonald, Mark (Aberdeen Donside) (SNP)
 McDougall, Margaret (West Scotland) (Lab)
 McInnes, Alison (North East Scotland) (LD)
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
 McLeod, Aileen (South Scotland) (SNP)
 McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
 McMahan, Michael (Uddingston and Bellshill) (Lab)
 McMahan, Siobhan (Central Scotland) (Lab)
 McMillan, Stuart (West Scotland) (SNP)
 McTaggart, Anne (Glasgow) (Lab)
 Murray, Elaine (Dumfriesshire) (Lab)
 Neil, Alex (Airdrie and Shotts) (SNP)
 Paterson, Gil (Clydebank and Milngavie) (SNP)
 Pearson, Graeme (South Scotland) (Lab)
 Pentland, John (Motherwell and Wishaw) (Lab)
 Rennie, Willie (Mid Scotland and Fife) (LD)
 Robertson, Dennis (Aberdeenshire West) (SNP)
 Robison, Shona (Dundee City East) (SNP)
 Salmond, Alex (Aberdeenshire East) (SNP)
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Stewart, David (Highlands and Islands) (Lab)
 Stewart, Kevin (Aberdeen Central) (SNP)
 Sturgeon, Nicola (Glasgow Southside) (SNP)
 Swinney, John (Perthshire North) (SNP)
 Urquhart, Jean (Highlands and Islands) (Ind)
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
 Wheelhouse, Paul (South Scotland) (SNP)
 White, Sandra (Glasgow Kelvin) (SNP)
 Wilson, John (Central Scotland) (Ind)
 Yousaf, Humza (Glasgow) (SNP)

Against

Brown, Gavin (Lothian) (Con)
 Buchanan, Cameron (Lothian) (Con)
 Carlaw, Jackson (West Scotland) (Con)
 Davidson, Ruth (Glasgow) (Con)
 Fergusson, Alex (Galloway and West Dumfries) (Con)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Goldie, Annabel (West Scotland) (Con)
 Johnstone, Alex (North East Scotland) (Con)
 Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
 McGrigor, Jamie (Highlands and Islands) (Con)
 Milne, Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Scott, John (Ayr) (Con)
 Smith, Liz (Mid Scotland and Fife) (Con)

The Deputy Presiding Officer: The result of the division is: For 94, Against 14, Abstentions 0.

Amendment 3 agreed to.

Amendment 4 moved—[Paul Wheelhouse]—and agreed to.

Section 3—Mandatory inquiries: exceptions

Amendment 36 not moved.

Amendment 5 moved—[Paul Wheelhouse]—and agreed to.

Amendments 37 and 38 not moved.

Amendment 6 moved—[Paul Wheelhouse]—and agreed to.

Amendment 39 not moved.

Section 4—Discretionary inquiries

Amendment 7 moved—[Paul Wheelhouse]—and agreed to.

Section 8—Reasons for decision not to hold an inquiry

Amendment 8 moved—[Paul Wheelhouse]—and agreed to.

Section 10—Persons who may participate in the inquiry

The Deputy Presiding Officer: That brings us to group 2, which is on the participation of trade unions and similar bodies in inquiries. Amendment 9, in the name of the minister, is grouped with amendments 10 to 12.

Paul Wheelhouse: The Scottish Government was happy to accept an amendment lodged at stage 2 by Elaine Murray that gives a statutory right of participation at a fatal accident inquiry to a trade union or staff association, although I said that we would consider whether the wording could be improved at stage 3. We have now held those discussions with Dr Murray and I am pleased to say that she indicated that she was content with the proposed amendments.

Dr Murray explained that her amendment was intended to cover sectors in which trade union membership was not permitted by law, such as the police. However, the term “staff association” does not have a recognised legal meaning. It could arguably cover the likes of internal equality networks or even sports or social associations. Consideration has been given to alternative wording that would deliver the policy intention.

Amendments 10 and 12 will cover bodies that are similar to trade unions—for example, in sectors where trade union membership is prohibited—and makes it clear that the body concerned must represent the interests of workers in connection with the employment or occupation during which the accident resulting in the death happened. That is intended to exclude bodies of workers that have a purely social function—for example, a sports association—and bodies that represent workers’ interests more generally, such as political bodies.

Amendment 10 also makes it clear that the requirement that the representation of workers’ interests must be

“in connection with the employment or occupation concerned”

also applies to the trade union.

Amendment 9 makes it clear that participation should be for a trade union or similar body itself

and not for a representative. Amendment 11 is consequential.

I hope that Elaine Murray and other members will welcome those amendments, which clarify and improve on the original stage 2 amendment.

I move amendment 9.

Elaine Murray: As the minister said, at stage 2, I introduced an amendment into section 10 to give a trade union or staff association representative of a person killed in the course of their employment the statutory right to participate in a fatal accident inquiry into the person's death. The bill gives that statutory right to the person's employer and to health and safety inspectors, and I felt that it was important that the participation of trade union or staff association representatives should be given parity, not least for the support that they can provide to the deceased's family.

The amendment was accepted unanimously, but I recognised that the wording probably needed tidying up. The definition of "staff association" caused some problems, but I was keen that, if a police officer, for example, died in the course of their employment—which, sadly, happens more often in that profession than in most—the Scottish Police Federation or the Association of Scottish Police Superintendents should have equal rights to attend to the equivalent trade unions.

The amendments in group 2 revise the wording while retaining the policy intention of my stage 2 amendment and, therefore, we are happy to support them.

15:30

The Deputy Presiding Officer: No other member has requested to speak, so I ask the minister to wind up.

Paul Wheelhouse: I am happy to leave it at that.

Amendment 9 agreed to.

Amendments 10 to 12 moved—[Paul Wheelhouse]—and agreed to.

Section 10A—Availability of civil legal aid

The Deputy Presiding Officer: Group 3 is on the availability of civil legal aid. Amendment 1, in the name of Patricia Ferguson, is grouped with amendment 13.

Patricia Ferguson (Glasgow Maryhill and Springburn) (Lab): I support amendment 1, in my name, and I oppose amendment 13, in the name of the minister.

My stage 2 amendment, which was agreed to by the Justice Committee, sought to ensure that one of the key findings of Lord Cullen's report on FAIs

would be implemented—namely, that civil legal aid would be available to the families of the bereaved to allow them to be represented at an FAI.

As the Parliament is aware, the bill has its genesis in the review of FAIs that was undertaken by Lord Cullen at the request of the Scottish Government. Lord Cullen made two particularly important points in relation to legal aid for families who wish to participate in FAIs. The first was that relatives often believe that the procurator fiscal attends an FAI to look after their interests if they are unrepresented, but the Crown Office and Procurator Fiscal Service's own guidance makes it clear that that is not the case and indicates that the role of the procurator fiscal is to represent to the court any matter that affects the public interest, not that of the bereaved families. Indeed, the procurator fiscal is perfectly entitled to decline to put questions on behalf of the families.

The second point that Lord Cullen made was that FAIs take place regardless of whether relatives consent to them. If relatives want to participate, their ability to do so without representation is limited, and they are at a considerable disadvantage in comparison with other parties. Indeed, the Faculty of Advocates stated in evidence to Lord Cullen that

"it is impossible for relatives to participate effectively in important inquiries without legal representation",

while Sheriff J P Murphy observed that the relatives

"should not be expected to be capable of self-representation in the traumatic situation of an FAI. I have never seen a lay person do it adequately."

My stage 2 amendment had the effect of disapplying the normal financial conditions and thresholds, and it required ministers to come forward with a special scheme of conditions for relatives who were involved in FAIs. I was deliberately not prescriptive about what those regulations should be but instead left to ministers the job of drawing up a scheme that would implement those intentions. I did so in the context of a presumption that legal aid would be available and that families would be able to be represented throughout the process and would not find that the cash had run out part way through an FAI, as has happened.

Amendment 13 would have the impact of removing the entire provision, which would mean that bereaved families would not have access to legal aid. It seems to me that that is a basic principle, and it is one that I hope Parliament will uphold by rejecting amendment 13.

Amendment 1 seeks to ensure that when ministers bring forward the scheme for legal aid that was agreed to at stage 2, as I hope they will, they are required to do so by affirmative

resolution. That would ensure that Parliament had the opportunity to consider whether the provisions of the Scottish Government's scheme fulfilled Parliament's objectives.

I move amendment 1.

Paul Wheelhouse: As Patricia Ferguson said, this group of amendments relates to the provision for legal aid for FAIs. Patricia Ferguson's amendment 1 is relevant only if her stage 2 amendment on legal aid remains part of the bill and, for reasons that I will explain, amendment 13 will reverse that amendment.

The bill as amended at stage 2 now provides for the establishment of a family charter, which will, as one of its effects, formalise the engagement between the bereaved family and the Crown Office and Procurator Fiscal Service. Among the issues that the charter will cover, the procurator fiscal will engage with the family on matters where they seek clarity on the circumstances of the death of their loved one from the FAI to inform the Crown's questions of witnesses, which will seek to serve the public interest, as Patricia Ferguson said.

At present, if the bereaved family wish to ask questions that the fiscal cannot ask in the public interest, they may be entitled to legal aid. They will typically qualify for legal aid if they meet the eligibility criteria. The key tests for agreeing legal aid are about probable cause and reasonableness. Probable cause will always be satisfied where a relative has a right to participate in a fatal accident inquiry, so the main question for the Scottish Legal Aid Board will often be about reasonableness.

To give a real-life example of the reasonableness test in action, I am aware of an example in which a relative was granted legal aid to explore specific mental health issues of the deceased that had been raised prior to that person's death. I make it clear that the reasonableness test will always be satisfied where a relative of the person requiring legal aid has died in prison.

Civil legal aid has generous financial eligibility thresholds to ensure that anyone who is eligible will be granted legal aid. Instead of controlling spend by restricting the types of cases that are eligible or capping the expenditure in any given year, tests of reasonableness and probable cause are applied as well as financial eligibility to ensure that public funds are appropriately directed.

Annabel Goldie (West Scotland) (Con): Because of the very nature of what a fatal accident inquiry is, is it not reasonable that both the family and the Scottish Legal Aid Board may have no idea about the facts that may be adduced in the course of the inquiry, so the family may be at a

genuine disadvantage if it is ruled that they are ineligible for legal aid?

Paul Wheelhouse: The point that I was making, which I will come to in more depth, was that, if there was clearly a disagreement on the line of questioning that the Crown might want to take and what the family might want to explore, perhaps because that was not relevant to the public interest, there would be a case to be made on probable cause and reasonableness. In practice, bereaved relatives already get access to legal aid for fatal accident inquiries. The point that I am making is that we do not need a provision in the bill to enable legal aid to be made available when there is probable cause and reasonableness. That already happens under the current regulations.

The provisions as they stand allow us to ensure that legal aid is available for a wide range of matters and that help is given where it is needed most. That contrasts with the approach in England and Wales, where cuts to legal aid mean that there is no longer access to legal help with specific types of family, medical, housing and welfare benefits problems. In certain cases, people even have to provide evidence that they or their children have been victims of domestic abuse or violence in order to access legal aid. We are trying to maintain the breadth of legal aid and the principles that underpin it.

Removing the tests for one type of proceeding—in this case, fatal accident inquiries—would, more importantly, undermine the general approach to and principles of legal aid in Scotland: that is, the principles of probable cause and reasonableness. If amendment 13 is not passed, that will in effect mean virtually automatic legal aid for fatal accident inquiries. It is simply not necessary for all parties to fatal accident inquiries to be legally represented. I take on board Annabel Goldie's point about something developing during an inquiry, but the procurator fiscal will obviously have explored with the family as part of the family charter what areas the family is keen to explore and what their concerns are about the inquiry prior to going in. That is an innovation as part of the bill. It is simply not necessary for all parties to FAIs to be legally represented, as the procurator fiscal already has a duty to bring forward evidence about the circumstances of the death.

Johann Lamont (Glasgow Pollok) (Lab): Does the minister accept that many people in our constituencies feel that they are very poorly served by the fatal accident inquiry system and are entirely excluded, and that they have no confidence in the prosecution service? The minister is saying that we do not have to look at that and everything is okay. In fact, the real problem is that people are not able to engage when they have concerns about how their rights

are being represented. Surely Patricia Ferguson's amendment addresses that.

Paul Wheelhouse: I listened to Johann Lamont's point. I merely point out that we have a bill on the back of Lord Cullen's review to reform the fatal accident inquiry process and we have the innovation of the milestone charter, or family charter as it is dubbed for the purposes of the bill, which was brought about by the line of questioning that Patricia Ferguson took and the Solicitor General's thoughts on the matter. That significantly moves us forward in making the fatal accident inquiry process much more engaged with families. There is a formal process in which families will engage and be communicated with throughout to ensure that they are part of the process and feel that their points are being addressed by the procurator fiscal and the inquiry process.

I hope that, with the passage of time, Ms Lamont will see that the system is being reformed to make it more family friendly. The main purpose of an FAI is to establish the facts around a death and to prevent further deaths from happening—clearly, we all share that aim. I reassure the member that the Crown Office and Procurator Fiscal Service is doing everything that it can to make the process more aligned with families' interests and to consult families on the line of questioning.

The change that Patricia Ferguson has proposed would be at the expense of the fundamental principles of the FAI and legal aid systems, and it would force us to look at alternative controls on legal aid. However, the issue is not just about the effect on legal aid. One of the key aims of the bill, which I hope is shared across the chamber, is to make FAIs less adversarial, but funding legal representation to raise concerns and questions that would be similar to those covered by the procurator fiscal in the public interest would achieve the exact opposite in some circumstances. If all parties at FAIs were legally represented, regardless of need, inquiries would inevitably become more adversarial, longer and more expensive. The key consideration is the potential for more adversarial and lengthier FAIs.

Those concerns were highlighted in consultation responses by those who are involved in the running of FAIs. The Sheriffs Association said:

"It is only where there is a conflict of interest between the procurator fiscal and the next of kin that there should be a necessity for separate representation. That is a matter that should be explored and determined fully by SLAB before legal aid is granted."

Lord Gill, in his consultation response while serving as Lord President, argued that increased legal aid for families of the deceased would lead to questions at FAIs becoming about blame, which is

for civil litigation, instead of about ascertaining the circumstances and causes of death. He also stated:

"The allowance of legal aid would negate the priorities of economy and expeditiousness that the proposals"—

that is, of the bill—

"should achieve."

Only yesterday, Lord Carloway said in a letter to me:

"There is no substantial reason why those seeking legal aid for representation at an FAI should be subject to less arduous financial tests than other applicants in other situations. It is difficult to justify a more lenient regime for the former than for, say, a victim of a road traffic accident who has suffered injuries of maximum severity."

He went on:

"Should family members be routinely represented, the inquiry risks losing its essential inquisitorial character and acquiring an unhelpful and inappropriate, and quite possibly prolonged, adversarial focus."

The Deputy Presiding Officer: Minister, I would be grateful if you would begin to conclude.

Paul Wheelhouse: I will, Presiding Officer.

I believe that our goal of making FAIs less adversarial is the right one. We should do what we can to avoid making FAIs more adversarial and thereby creating greater difficulty in finding the truth with the aim of preventing a recurrence of a death. In doing so, it is important to preserve the principles that underpin the legal aid system. I urge members to support amendment 13 and reject amendment 1.

Margaret Mitchell: Like the majority of members of the Justice Committee, I supported the provisions on legal aid for bereaved families in fatal accident inquiries under the terms of Patricia Ferguson's amendment 60 at stage 2, which I considered to be proportionate and balanced. The key point is that the Crown Office and Procurator Fiscal Service represents the public interest and not specifically the interests of relatives. It is therefore only right and fair that legal aid should be available to ensure that those interests are represented. Further, the measure was another of Lord Cullen's recommendations that was not included in the bill. If the Government uses its parliamentary majority to remove the provision, that will further fuel the view that the grave concerns about the absence of checks and balances in the decision making of the Scottish National Party majority Government are well founded.

Roderick Campbell: I have listened to the debate with some interest. One matter that still puzzles me slightly about the Opposition's approach is that we had Lord Cullen before the Justice Committee at stage 1 and nobody asked

him a question on the issue. I accept that the issue arose at stage 2, but he was not asked about it then. If it was an important issue that the Government had not accepted in Lord Cullen's report, one would have anticipated that Opposition members would have wanted to question him on it, but that did not happen.

Patricia Ferguson rightly referred to the bits in Lord Cullen's report that touch on the matter. As she pointed out, Lord Cullen stated:

"the procurator fiscal is independent of any party, including the relatives, and should not be regarded as their representative at the FAI. He or she is entitled to decline to put questions for the relatives."

However, Patricia Ferguson did not point out that Lord Cullen went on to say:

"I note that the COPFS state in their guidance that, where necessary, the procurator fiscal will indicate to the relatives 'that it is unlikely that [he or she] will be able adequately to represent their interest and concerns at the Inquiry and that separate representation is considered appropriate'".

That is the key. The minister also referred to Lord Carloway's comments about the number of times when the interests of the family and the procurator fiscal do not diverge. Clearly, when they do diverge there should be an opportunity to obtain legal aid, but I hope that the milestone charter means that situations in which people feel that they have been deprived of that opportunity will be few and far between.

15:45

Johann Lamont: Will the member give way?

Roderick Campbell: I have just finished speaking.

The Deputy Presiding Officer: The member has indicated that he has finished his speech, I am afraid. I call Patricia Ferguson to wind up the debate.

Patricia Ferguson: I am slightly confused by what Roderick Campbell said. The whole point of having stage 2 is to enable matters to be brought up that have not been dealt with at stage 1. I do not know whether Mr Campbell is arguing that we should not have stage 2 at all.

Mr Campbell read out a passage from Lord Cullen's very good report on FAIs, which I will read again, for the avoidance of doubt. He quoted from guidance that provides that, in a case in which the procurator fiscal cannot represent the family, they will indicate

"that it is unlikely that [he or she] will be able adequately to represent their interest and concerns at the Inquiry and that separate representation is considered appropriate."

Yes, and we need the money to pay for that. Families in such a situation will not always have

resources to fall back on to enable them to secure representation.

In all this, it seems strange to me that the qualifications for legal aid for an FAI are currently the same as they are for any civil litigation, which means that probable cause must be identified. It seems odd to me to apply the concept of probable cause to an FAI, because, as the minister says, an FAI is not litigation between parties. The approach seems bizarre.

The minister mentioned the charter, which I very much welcome. If the point of having the charter is that the minister accepts that families need more information and require to be kept informed, surely families must also have the right to be considered to have an interest in an FAI—an interest that will be meaningful only if they are represented.

Paul Wheelhouse: I accept the member's point about the need for families to be represented where the procurator fiscal is perhaps taking an approach that is different from the approach that they want to be taken. When probable cause and reasonableness kick in, families who can demonstrate a relevant interest in the FAI—as opposed to people who do not have an interest—can be represented in the inquiry. I gave the example of someone whose relative dies in prison, who would very likely get legal aid, because of the difficulties that are faced by someone who loses a loved one in such a situation. That is an example of how probable cause is demonstrated and the reasonableness test is applied.

Patricia Ferguson: I think that I am right in saying that, after a death in custody, civil legal aid is automatically granted to enable the family to be represented at a fatal accident inquiry. I will stand corrected if I am not right about that.

The point is that a family who want to be represented at a fatal accident inquiry will not necessarily know that there is an issue about probable cause until they are some way into the FAI process. How do we cope with that? Is the minister saying that we will halt fatal accident inquiries willy-nilly to allow the Scottish Legal Aid Board to reconsider a case before an FAI resumes?

Paul Wheelhouse: Will the member give way?

Patricia Ferguson: No. I heard what the minister said, and I have to say that it was not particularly helpful—[*Interruption.*]

The Deputy Presiding Officer: Order, please.

Patricia Ferguson: If the minister will give me a minute to respond to what has been said, I will give way later.

The charter does not provide for the procurator fiscal to represent the family. It makes it easier for

the family to get information during the process, but it does not allow the procurator fiscal to act on their behalf. At the moment and in future, the procurator fiscal will represent the public interest, which is a different thing.

Paul Wheelhouse: I am grateful to the member for giving way.

In many cases, there might be a good alignment between the public interest and the interests of the family. Where that is not the case, there is a very high chance—subject to the financial eligibility test, as with other forms of legal aid—that the relatives will have access to legal aid to enable them to take forward a line of questioning that might not be taken forward by the procurator fiscal.

I reassure the member that the arrangements that already apply will be strengthened by the family charter. There is a process to ensure that the procurator fiscal discusses the kinds of questions that the families would like to be considered.

The Deputy Presiding Officer: Patricia Ferguson, please begin to draw to a close.

Patricia Ferguson: Thank you, Presiding Officer. I am close to finishing.

I know that the minister is trying to be helpful, but it will not work with the process. Family members will not know that there will be a difference between their interest and the public interest until they see the line of questioning.

None of us wants to see FAls being adversarial. In my view—I am not quoting from anyone here—FAls are likely to be more adversarial if people do not have the right to representation. It stands to reason. It is a basic principle that bereaved family members who are having to go through the trauma of a fatal accident inquiry should be assisted by the state in doing so.

I press amendment 1.

The Deputy Presiding Officer: The question is, that amendment 1 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Baker, Claire (Mid Scotland and Fife) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Beamish, Claudia (South Scotland) (Lab)
 Bibby, Neil (West Scotland) (Lab)
 Boyack, Sarah (Lothian) (Lab)
 Brown, Gavin (Lothian) (Con)
 Carlaw, Jackson (West Scotland) (Con)
 Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
 Davidson, Ruth (Glasgow) (Con)
 Dugdale, Kezia (Lothian) (Lab)

Fee, Mary (West Scotland) (Lab)
 Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
 Fergusson, Alex (Galloway and West Dumfries) (Con)
 Findlay, Neil (Lothian) (Lab)
 Finnie, John (Highlands and Islands) (Ind)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Goldie, Annabel (West Scotland) (Con)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Hilton, Cara (Dunfermline) (Lab)
 Hume, Jim (South Scotland) (LD)
 Johnstone, Alex (North East Scotland) (Con)
 Johnstone, Alison (Lothian) (Green)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
 Macintosh, Ken (Eastwood) (Lab)
 Malik, Hanzala (Glasgow) (Lab)
 McArthur, Liam (Orkney Islands) (LD)
 McCulloch, Margaret (Central Scotland) (Lab)
 McDougall, Margaret (West Scotland) (Lab)
 McGrigor, Jamie (Highlands and Islands) (Con)
 McInnes, Alison (North East Scotland) (LD)
 McMahan, Michael (Uddingston and Bellshill) (Lab)
 McMahan, Siobhan (Central Scotland) (Lab)
 McTaggart, Anne (Glasgow) (Lab)
 Mitchell, Margaret (Central Scotland) (Con)
 Murray, Elaine (Dumfriesshire) (Lab)
 Pearson, Graeme (South Scotland) (Lab)
 Pentland, John (Motherwell and Wishaw) (Lab)
 Rennie, Willie (Mid Scotland and Fife) (LD)
 Scott, John (Ayr) (Con)
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
 Smith, Liz (Mid Scotland and Fife) (Con)
 Stewart, David (Highlands and Islands) (Lab)
 Wilson, John (Central Scotland) (Ind)

Against

Adam, George (Paisley) (SNP)
 Adamson, Clare (Central Scotland) (SNP)
 Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
 Allard, Christian (North East Scotland) (SNP)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Biagi, Marco (Edinburgh Central) (SNP)
 Brodie, Chic (South Scotland) (SNP)
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)
 Buchanan, Cameron (Lothian) (Con)
 Burgess, Margaret (Cunninghame South) (SNP)
 Campbell, Aileen (Clydesdale) (SNP)
 Campbell, Roderick (North East Fife) (SNP)
 Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
 Constance, Angela (Almond Valley) (SNP)
 Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
 Dey, Graeme (Angus South) (SNP)
 Don, Nigel (Angus North and Mearns) (SNP)
 Doris, Bob (Glasgow) (SNP)
 Dornan, James (Glasgow Cathcart) (SNP)
 Eadie, Jim (Edinburgh Southern) (SNP)
 Ewing, Annabelle (Mid Scotland and Fife) (SNP)
 Ewing, Fergus (Inverness and Nairn) (SNP)
 Fabiani, Linda (East Kilbride) (SNP)
 FitzPatrick, Joe (Dundee City West) (SNP)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
 Hyslop, Fiona (Linlithgow) (SNP)
 Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
 Keir, Colin (Edinburgh Western) (SNP)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lochhead, Richard (Moray) (SNP)

Lyle, Richard (Central Scotland) (SNP)
 MacAskill, Kenny (Edinburgh Eastern) (SNP)
 MacDonald, Angus (Falkirk East) (SNP)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 Mackay, Derek (Renfrewshire North and West) (SNP)
 MacKenzie, Mike (Highlands and Islands) (SNP)
 Mason, John (Glasgow Shettleston) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 Maxwell, Stewart (West Scotland) (SNP)
 McAlpine, Joan (South Scotland) (SNP)
 McDonald, Mark (Aberdeen Donside) (SNP)
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
 McLeod, Aileen (South Scotland) (SNP)
 McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
 McMillan, Stuart (West Scotland) (SNP)
 Milne, Nanette (North East Scotland) (Con)
 Neil, Alex (Airdrie and Shotts) (SNP)
 Paterson, Gil (Clydebank and Milngavie) (SNP)
 Robertson, Dennis (Aberdeenshire West) (SNP)
 Robison, Shona (Dundee City East) (SNP)
 Salmond, Alex (Aberdeenshire East) (SNP)
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Stewart, Kevin (Aberdeen Central) (SNP)
 Sturgeon, Nicola (Glasgow Southside) (SNP)
 Swinney, John (Perthshire North) (SNP)
 Urquhart, Jean (Highlands and Islands) (Ind)
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
 Wheelhouse, Paul (South Scotland) (SNP)
 White, Sandra (Glasgow Kelvin) (SNP)
 Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 45, Against 63, Abstentions 0.

Amendment 1 disagreed to.

Amendment 13 moved—[Paul Wheelhouse].

The Deputy Presiding Officer: The question is, that amendment 13 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Adam, George (Paisley) (SNP)
 Adamson, Clare (Central Scotland) (SNP)
 Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
 Allard, Christian (North East Scotland) (SNP)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Biagi, Marco (Edinburgh Central) (SNP)
 Brodie, Chic (South Scotland) (SNP)
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)
 Burgess, Margaret (Cunninghame South) (SNP)
 Campbell, Aileen (Clydesdale) (SNP)
 Campbell, Roderick (North East Fife) (SNP)
 Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
 Constance, Angela (Almond Valley) (SNP)
 Cunningham, Roseanna (Perthshire South and Kinrossshire) (SNP)
 Dey, Graeme (Angus South) (SNP)
 Don, Nigel (Angus North and Mearns) (SNP)
 Doris, Bob (Glasgow) (SNP)
 Dornan, James (Glasgow Cathcart) (SNP)
 Eadie, Jim (Edinburgh Southern) (SNP)
 Ewing, Annabelle (Mid Scotland and Fife) (SNP)
 Ewing, Fergus (Inverness and Nairn) (SNP)
 Fabiani, Linda (East Kilbride) (SNP)
 FitzPatrick, Joe (Dundee City West) (SNP)

Gibson, Kenneth (Cunninghame North) (SNP)
 Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
 Hyslop, Fiona (Linlithgow) (SNP)
 Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
 Keir, Colin (Edinburgh Western) (SNP)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lochhead, Richard (Moray) (SNP)
 Lyle, Richard (Central Scotland) (SNP)
 MacAskill, Kenny (Edinburgh Eastern) (SNP)
 MacDonald, Angus (Falkirk East) (SNP)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 Mackay, Derek (Renfrewshire North and West) (SNP)
 MacKenzie, Mike (Highlands and Islands) (SNP)
 Mason, John (Glasgow Shettleston) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 Maxwell, Stewart (West Scotland) (SNP)
 McAlpine, Joan (South Scotland) (SNP)
 McDonald, Mark (Aberdeen Donside) (SNP)
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
 McLeod, Aileen (South Scotland) (SNP)
 McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
 McMillan, Stuart (West Scotland) (SNP)
 Neil, Alex (Airdrie and Shotts) (SNP)
 Paterson, Gil (Clydebank and Milngavie) (SNP)
 Robertson, Dennis (Aberdeenshire West) (SNP)
 Robison, Shona (Dundee City East) (SNP)
 Salmond, Alex (Aberdeenshire East) (SNP)
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Stewart, Kevin (Aberdeen Central) (SNP)
 Sturgeon, Nicola (Glasgow Southside) (SNP)
 Swinney, John (Perthshire North) (SNP)
 Urquhart, Jean (Highlands and Islands) (Ind)
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
 Wheelhouse, Paul (South Scotland) (SNP)
 White, Sandra (Glasgow Kelvin) (SNP)
 Yousaf, Humza (Glasgow) (SNP)

Against

Baker, Claire (Mid Scotland and Fife) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Beamish, Claudia (South Scotland) (Lab)
 Bibby, Neil (West Scotland) (Lab)
 Boyack, Sarah (Lothian) (Lab)
 Brown, Gavin (Lothian) (Con)
 Buchanan, Cameron (Lothian) (Con)
 Carlaw, Jackson (West Scotland) (Con)
 Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
 Davidson, Ruth (Glasgow) (Con)
 Dugdale, Kezia (Lothian) (Lab)
 Fee, Mary (West Scotland) (Lab)
 Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
 Fergusson, Alex (Galloway and West Dumfries) (Con)
 Findlay, Neil (Lothian) (Lab)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Goldie, Annabel (West Scotland) (Con)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Hilton, Cara (Dunfermline) (Lab)
 Hume, Jim (South Scotland) (LD)
 Johnstone, Alex (North East Scotland) (Con)
 Johnstone, Alison (Lothian) (Green)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
 Macintosh, Ken (Eastwood) (Lab)
 Malik, Hanzala (Glasgow) (Lab)
 McArthur, Liam (Orkney Islands) (LD)
 McCulloch, Margaret (Central Scotland) (Lab)

McDougall, Margaret (West Scotland) (Lab)
 McGrigor, Jamie (Highlands and Islands) (Con)
 McInnes, Alison (North East Scotland) (LD)
 McMahon, Michael (Uddingston and Bellshill) (Lab)
 McMahon, Siobhan (Central Scotland) (Lab)
 McTaggart, Anne (Glasgow) (Lab)
 Milne, Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Murray, Elaine (Dumfriesshire) (Lab)
 Pearson, Graeme (South Scotland) (Lab)
 Pentland, John (Motherwell and Wishaw) (Lab)
 Rennie, Willie (Mid Scotland and Fife) (LD)
 Scott, John (Ayr) (Con)
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
 Smith, Liz (Mid Scotland and Fife) (Con)
 Stewart, David (Highlands and Islands) (Lab)
 Wilson, John (Central Scotland) (Ind)

The Deputy Presiding Officer: The result of the division is: For 61, Against 46, Abstentions 0.

Amendment 13 agreed to.

Section 26—Dissemination of the sheriff's determination

The Deputy Presiding Officer: Group 4 is on sheriff's determination and recommendations. Amendment 14, in the name of the minister, is grouped with amendments 15 to 19.

Paul Wheelhouse: The amendments are technical Government amendments on the sheriff's determination and recommendations at the conclusion of a fatal accident inquiry. Amendment 14 removes the requirement for the Scottish Courts and Tribunals Service to provide a copy of a sheriff's determination to any person who pays the specified fee. That is no longer required because all determinations will be published under section 26(1)(a) by the Scottish Courts and Tribunals Service, so interested persons will be able to obtain the determinations online. The SCTS can provide printouts or alternative formats for cases in which an interested person cannot access the website in order to fulfil its Equality Act 2010 duties.

Amendments 15 and 16 tidy up a minor drafting issue that was identified in the new section 27A that was inserted at stage 2 by an amendment from Patricia Ferguson with Scottish Government support. Ms Ferguson's amendment placed a duty on Scottish ministers to publish an annual report on the number of responses to sheriffs' recommendations that are made in the determination at the conclusion of an FAI during a financial year. The amendments remove some potentially confusing words to make it clear that responses received in the eight-week period following the end of the financial year are to be included in the annual report for that financial year. That does not alter the policy that was proposed by Patricia Ferguson and I have shared the amendments with her as a courtesy.

Amendment 17 relates to what happens when the Lord Advocate decides that further proceedings should be initiated either by reopening an inquiry or, exceptionally, by holding a fresh inquiry. In the interests of transparency, the bill does not provide for the withdrawal of the original determination from publication. It should, however, be made clear by means of the publication of a notice that the original determination has been set aside. Amendment 17 ensures that, at the point that the sheriff makes an order for further proceedings, the Scottish Courts and Tribunals Service must publish a notice explaining that the determination has been set aside. An interested person going to the SCTS website will therefore see all of the relevant information together.

Amendments 18 and 19 are technical amendments to section 33 relating to further inquiry proceedings. They relate to where a recommendation was made in the original determination by the sheriff but a recommendation in the same terms is not made in the new determination. In such circumstances, the SCTS must withdraw from publication responses to such recommendations and any notices published in relation to them.

Amendment 19 requires the SCTS to withdraw from publication notices that state that part of a response to a recommendation has been withheld from publication, in addition to those published that state that the whole of a response has been withheld or that no response was given. Amendment 18 is consequential to amendment 19.

I move amendment 14.

Amendment 14 agreed to.

Section 27A—Reports

Amendments 15 and 16 moved—[Paul Wheelhouse]—and agreed to.

Section 30—Initiating further proceedings

Amendment 17 moved—[Paul Wheelhouse]—and agreed to.

Section 33—Further inquiry proceedings: compliance with recommendations

Amendments 18 and 19 moved—[Paul Wheelhouse]—and agreed to.

Section 34—Power to regulate procedure etc

The Deputy Presiding Officer: Group 5 is on inquiry rules: role of the Scottish Civil Justice Council. Amendment 20, in the name of the minister, is grouped with amendments 21 to 35.

Paul Wheelhouse: Amendments 20 to 35 are highly technical in nature.

Amendments 21 and 22, together with amendment 34, are the key substantive amendments in this group. They add section 34(6) and schedule 1 to the list of sections that will come into force the day after royal assent. That is to permit the Scottish Civil Justice Council to begin work early in the new year on drafting rules for FAIs to replace the Fatal Accidents and Sudden Deaths Inquiry Procedure (Scotland) Rules 1977. The SCJC currently has no powers to do so.

Amendment 34 removes paragraph 2 of schedule 1. That removes the transitional arrangement for the Scottish ministers to make regulations for FAI rules before the SCJC takes on the responsibility. Amendment 20 is consequential to amendment 34.

Amendment 31 inserts a new paragraph into section 4(3) of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 to make it clear that the Court of Session's power to make inquiry rules is not prejudiced by the SCJC's specific statutory function of preparing draft FAI rules.

Amendments 23 to 30, 32, 33 and 35 are technical remodelling of existing provisions, which do not have any substantive effect. They are needed because the Scottish Civil Justice Council will now take on the role of drafting FAI rules before it takes on the role of drafting rules for the Scottish tribunals.

Amendment 35 makes some minor consequential tidying-up changes to the Tribunals (Scotland) Act 2014.

I move amendment 20.

Amendment 20 agreed to.

Section 40—Commencement

Amendments 21 and 22 moved—[Paul Wheelhouse]—and agreed to.

Schedule 1—Procedure rules

Amendments 23 to 34 moved—[Paul Wheelhouse]—and agreed to.

Schedule 2—Modification of enactments

Amendment 35 moved—[Paul Wheelhouse]—and agreed to.

Inquiries into Fatal Accidents and Sudden Deaths etc (Scotland) Bill

The Deputy Presiding Officer (John Scott):

The next item of business is a debate on motion S4M-15113, in the name of Paul Wheelhouse, on the Inquiries into Fatal Accidents and Sudden Deaths etc (Scotland) Bill. Before I invite the minister to open the debate, I call the Cabinet Secretary for Justice to signify Crown assent to the bill.

The Cabinet Secretary for Justice (Michael Matheson): For the purposes of rule 9.11 of the standing orders, I advise the Parliament that Her Majesty, having been informed of the purport of the Inquiries into Fatal Accidents and Sudden Deaths etc (Scotland) Bill, has consented to place her prerogatives and interests, so far as they are affected by the bill, at the disposal of the Parliament for the purposes of the bill.

16:00

The Minister for Community Safety and Legal Affairs (Paul Wheelhouse): I am delighted to open this stage 3 debate on the Inquiries into Fatal Accidents and Sudden Deaths etc (Scotland) Bill. The law relating to the investigation of sudden, suspicious and unexplained death is different in Scotland from the law in the rest of the United Kingdom. Countries that follow the common-law system, such as England, have coroners. In countries where there is a tradition of the civil law—in other words, law deriving from Roman law—sudden and suspicious deaths are investigated by the procurator, whose other duties include the preparation of criminal cases for prosecution.

Scotland is historically a country where the civil law has been followed, so the duty of investigating sudden and unnatural deaths has been handed down over a number of centuries to the procurator fiscal. The concept of the fatal accident inquiry has its roots in the reforms of the 19th century, which quite rightly demanded the improvement of social and working conditions.

The procurator fiscal thus first became the guardian of the public interest in relation to industrial and occupational deaths in order to ensure the impartial investigation of fatal industrial accidents with a view to presenting the evidence to a sheriff. Later, the procurator fiscal was charged with investigating any sudden or suspicious death in Scotland in relation to which there was a public interest in exposing and examining the facts of the death.

There have been a number of pieces of legislation on fatal accident inquiries and the most

recent, the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976, has served Scotland for nearly 40 years. It is right that the law should now be reformed and modernised and I pay tribute to Lord Cullen, who carried out a most thorough review of the legislation, which has brought us to this point.

There is a reason why I have sought to put the system of death investigation and of fatal accident inquiries in Scotland into context and to explain its historical derivation. Procurators fiscal investigate some 5,500 sudden, suspicious or unexplained deaths every year. Clearly many of those investigations will result in criminal proceedings.

In many cases, the fiscal will conclude that no further investigation or inquiry is necessary. Only around 50 to 60 cases per annum proceed to a full fatal accident inquiry before a sheriff. The Scottish Government firmly believes that this system incorporates and permits a necessary and beneficial degree of flexibility. Cases that have led to public concern will almost certainly lead to an FAI before a sheriff, while those that do not, by and large, will not.

One of the strengths of vesting all death investigation powers in a single public officer is that when homicide has been excluded, the prosecutor's duty is not at an end, whereas if suspicious circumstances emerge in the course of investigating what had appeared to be an expected death, the prosecutor is already aware of the circumstances.

Deaths as a result of an accident in the course of employment and deaths in legal custody will automatically result in mandatory FAIs. Under the bill, deaths of children in secure accommodation and deaths in police custody, irrespective of the location of the death, will also now result in mandatory inquiries.

In all other cases, discretion is given to the Lord Advocate and the Crown Office to decide whether an FAI is required in the public interest. It is right that they should have that discretion, since the Crown will first have to establish whether there has been any behaviour in relation to the death that merits criminal prosecution. Only after that decision has been taken will consideration be given to the need for an FAI where it is not mandatory.

Lord Gill, the former Lord President, indicated in his evidence to the Justice Committee that it was right that the Crown Office should exercise discretion rather than the law becoming too inflexible, which would lead to many FAIs being held from which no lessons would be learned yet the bereaved family or families would suffer the distress of a public examination of the circumstances of the death of their loved one.

Under the bill, it will now be possible for the Lord Advocate to judge whether it would be in the public interest for an FAI to be held into the death of a person normally resident in Scotland who dies or is killed abroad. In coming to that decision, the Lord Advocate will have to take into account whether there has already been an adequate investigation of the death in the country where it took place. He or she will also have to consider whether there is a realistic prospect that an investigation in Scotland by the Crown Office will be able to properly establish the circumstances of the death, given that it will have to rely on liaison with, and the co-operation of, the legal and Government authorities in the country in which the death took place.

Nevertheless, the Government believes that the bill is a major advance in the law of death investigation in Scotland, particularly as it will be possible to hold an FAI without the body being repatriated to this country. That is still a requirement for a coroner's inquest to be held in such circumstances in the rest of the UK. The requirement for the repatriation of the body was removed from the bill at the suggestion of the Justice Committee, to whose members I extend my thanks for their thoughtful and thorough consideration of the bill. There is therefore now parity in the bill in terms of a death occurring on the Scottish mainland, in the offshore North Sea oil and gas area, or abroad.

I should add that the system in Scotland is quite different from that under coroners in the rest of the UK. Under the coroners' system, the coroner is responsible for the investigation of the death or deaths, but the coroner also presides over the inquest. In Scotland, the procurator fiscal investigates the death but if an FAI is mandatory or is ordered by the Lord Advocate, the fiscal will present the evidence to a full judicial inquiry before a sheriff. We believe that that system combines and embodies the necessary elements of effective investigation, separation of powers and judicial independence to determine authoritatively the circumstances of the death and any precautions that might have been taken and which should be taken in the future to prevent deaths in similar circumstances.

The bill contains new provisions that require participants at FAIs to whom a sheriff has directed a recommendation to respond, setting out how they propose to implement the recommendation or, if they do not intend to comply, explaining why not. Patricia Ferguson lodged an amendment at stage 2 that requires Scottish ministers to produce an annual report on responses to recommendations. Taken as a package, we believe that the proposals on requiring responses to sheriffs' recommendations and the annual report will provide a transparent record of what

has happened in relation to those recommendations. The report will highlight whether participants have responded to the recommendations, although if the experience under a similar system for coroners' inquests is a guide, very high response rates may be expected.

Patricia Ferguson lodged another amendment at stage 2, which provides statutory underpinning for the family liaison charter that the Solicitor General for Scotland promised during evidence at stage 1. The charter will keep bereaved families fully informed of the progress of a death investigation and the likelihood of criminal proceedings or the potential for a fatal accident inquiry.

Patricia Ferguson did, of course, introduce her own member's bill on fatal accident inquiries. Although she chose to withdraw her bill at stage 1, it is appropriate to acknowledge and pay tribute to all the hard work that she has devoted to addressing the various issues surrounding death investigations and FAIs. I thank her for the collaborative way in which she has engaged with the Government on the bill.

Elaine Murray lodged an amendment at stage 2 on trade union participation at FAIs. The Scottish Government accepted the amendment, subject to amending the provision to ensure that it properly reflected the policy intention. I am grateful to Elaine Murray, too, for discussing that with me, which has resulted in our amending the provision to ensure that it means that bodies similar to trade unions that represent workers who are not permitted to join trade unions will be able to participate at FAIs.

I pay tribute, too, to Flt Lt James Jones, who drew to the attention of the Justice Committee the anomaly that deaths of service personnel in the course of their duties in Scotland do not at present automatically result in a fatal accident inquiry, although a discretionary inquiry may be held. That fact was not raised by Lord Cullen in his review, nor was the matter raised during the Government's consultation on its legislative proposals. It is a credit to the Justice Committee's system of evidence taking that the issue was identified during its deliberations.

The matter will now be progressed by means of a section 104 order under the Scotland Act 1998, which will be brought forward at the Westminster Parliament because the issue engages the reservation of defence matters and the armed forces. I indicated during the stage 1 debate that we have received agreement in principle from the UK Government for that change. The Scottish Government will continue to work with the UK Government to put in place the necessary order next year.

The bill is not the end of the reforms of the system of fatal accident inquiries. In addition to the section 104 order to which I have referred, the Scottish Civil Justice Council will prepare rules for FAIs under section 34 of the bill that will complement and supplement the bill's provisions. The rules will provide the kind of comprehensive, self-contained set of rules that Lord Cullen recommended were necessary for FAIs. It will therefore not be necessary in future to supplement the fairly sparse existing rules for FAIs with rules that were written for adversarial civil litigation, which may not lend themselves to an inquisitorial fact-finding process.

The involvement of the Scottish Civil Justice Council will ensure that the new draft bespoke rules for FAIs benefit from structured, co-ordinated stakeholder input. The rules will cover matters such as preliminary hearings, which will now be the norm for FAIs; the agreement so far as possible of uncontroversial evidence before the start of an FAI; greater case management powers for sheriffs, in line with the general thrust of the reforms under the Courts Reform (Scotland) Act 2014; and the new provisions for further inquiry proceedings where new evidence comes to light. The intention is that the new act, the rules and the section 104 order will all be commenced at the same time. As it will take some months to work up suitable and comprehensive rules under the new act, it is anticipated that commencement will not be until later in 2016.

The Scottish Government's bill provides for a coherent, proportionate, modernised system of fatal accident inquiries fit for the 21st century. It seeks to provide what Lord Cullen desired: practical measures for a system of inquiry that is effective, efficient and fair. We believe that that is what the bill does and we hope that the legislation will be able to serve for even longer than the 1976 act. I commend the motion in my name and ask members to support it.

I move,

That the Parliament agrees that the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Bill be passed.

16:10

Elaine Murray (Dumfriesshire) (Lab): As we have heard, fatal accident inquiries into the circumstances of deaths are undertaken in the public interest in order to determine the time, place and cause of death and to establish whether lessons can be learned in order to prevent similar fatalities in the future. They are intended to be inquisitorial rather than adversarial, and they do not attempt to allocate criminal guilt. I think that we all agree that they should continue to operate in that manner.

The current legislation has for some time been recognised as being inadequate. As long ago as March 2008, shortly after Lord Cullen was asked to conduct his review of the fatal accident inquiry process, a debate was held in Parliament on the inadequacies of the system, and members' speeches were informed by their direct knowledge of the experiences of their constituents.

Nine of Patricia Ferguson's constituents died when ICL Plastics Group's Stockline Plastics Ltd factory exploded in May 2004, and it was because of frustrations with the delays in the system—a judge-led public inquiry was not held for four years—that Ms Ferguson introduced to Parliament in November last year her proposal for the Inquiries into Deaths (Scotland) Bill. She had consulted on draft proposals in August 2013, and Lord Cullen had reported his findings in 2009. The Scottish Government responded in 2011, but did not introduce its bill until after Patricia Ferguson's bill had been introduced. This may seem to be cynical, but I wonder whether the Inquiries into Fatal Accidents and Sudden Deaths etc (Scotland) Bill would be with us today if Patricia Ferguson had not started the ball rolling with her member's bill.

Nevertheless, having been introduced in March, the Fatal Accidents and Sudden Deaths etc (Scotland) Bill has progressed fairly rapidly. As members know, Patricia Ferguson agreed to withdraw her bill and instead to work with the Government on amendments. Her bill sought to introduce time limits within which certain decisions should be taken and family members informed. During the stage 1 evidence taking, the Solicitor General for Scotland advised the Justice Committee of her intention to draw up a charter that would advise what bereaved families could expect with regard to communication, and a copy of the draft charter was circulated to committee members over the summer. At stage 2, Patricia Ferguson, in agreement with the Government, submitted an amendment to put that charter on a statutory basis. She and the Scottish Government also agreed on an amendment to require ministers to prepare an annual report on sheriffs' recommendations relating to FAIs, and some clarifying amendments have been agreed to this afternoon.

I mention those two amendments because one of the Justice Committee's recommendations was that the bill be amended to include some additional aspects of Patricia Ferguson's bill. Even as amended, the bill does not address all the issues that she hoped to cover in her bill, but she will speak in the open debate and will, no doubt, comment on those issues. Neither does the bill address all of Lord Cullen's recommendations, although it may be that the Government plans to bring some of those things into effect later on.

However, the bill improves on the current legislation and is, therefore, welcome.

I am pleased that my modest stage 2 amendment was accepted so that the bill now gives representatives of the trade union of which the deceased was a member at the time of their death an automatic right to attend a fatal accident inquiry, thereby giving the trade union parity with the deceased's employer. My original amendment also mentioned staff associations because I was keen for bodies such as the Scottish Police Federation and the Association of Scottish Police Superintendents to have the same entitlement to attend an inquiry when one of their members has died. I am grateful to the Scottish Government for improving the way in which that was expressed in its stage 3 amendments.

The Government amended the bill at stage 2 to enable an FAI to be held when a death has occurred abroad, even if the body cannot be repatriated. There are circumstances, for example deaths at sea, in which retrieval of the body is not possible. There being no possibility of a burial or a cremation ceremony is very upsetting for families—even without the law also debarring the possibility of a fatal accident inquiry being held in the public interest.

At stage 1, Flt Lt James Jones brought to us the issue of service personnel who die in service in Scotland. I am pleased that the United Kingdom Parliament is discussing that and I hope that there will be a resolution of the issue. I, too, am grateful to Flt Lt Jones for drawing our attention to the issue.

Patricia Ferguson also lodged an amendment that had majority support in the committee and which would have ensured that families could be legally represented through the complexities of a fatal accident inquiry by removing the reasonableness test for eligibility for legal aid. We are disappointed that the Scottish Government has chosen to delete that provision today, because it continued to have the support of all the opposition parties in Parliament, especially given Ms Ferguson's erudite explanation of the need for families to be confident at the commencement of the FAI process that they will receive legal aid.

It is notable that the families of people who die in prison are now treated differently in this regard from the families of people who die at work or in the streets.

The committee, on majority vote, also amended the bill at stage 2 to implement Lord Cullen's recommendation to make FAIs mandatory when people die when they are in compulsory mental health detention. At the time, we were supported by third sector organisations, including Enable, in their submissions to Lord Cullen's review, and we

had also been told that coroner's inquiries are mandatory in such circumstances in England and Wales.

However, several organisations, health professionals and—crucially—mental health patients and their families subsequently wrote to both the Government and MSPs to ask that the amendments be deleted from the bill and for the bill to revert to the original wording, which provides for discretionary FAIs in such circumstances. As I said during consideration of the stage 3 amendments, my correspondence yesterday with Enable indicated that it would be content with that change, so long as adequate assurances are given that the review of the investigation that is required by section 37 of the Mental Health Act 1983, of deaths of patients who, at the time of death, are detained in hospital under mental health law, is progressed as a matter of urgency. We heard today that the order to do that was laid yesterday and that the review will be undertaken as soon as possible. It was worth while to amend the bill at stage 2, in order to get that reassurance today. I know that everybody will be grateful for that.

Despite our disappointment about the deletion of Patricia Ferguson's amendment on legal aid, we believe that the bill has been improved by comparison with Patricia Ferguson's bill and by the subsequent amendments that were agreed at stages 2 and 3. We will support it in this evening's vote.

16:16

Margaret Mitchell (Central Scotland) (Con): I acknowledge Patricia Ferguson's significant involvement in this legislative process following the withdrawal of her own bill, and her co-operation with the Scottish Government at stage 2. I thank the witnesses and stakeholders for their insightful evidence, which has informed the committee's scrutiny of the bill.

It is not surprising that, 30 years after the system of FAIs was enacted, significant reform and modernisation of it were required. In 2009, Lord Cullen's review of the law governing FAIs made a number of important recommendations, many of which are provided for by the bill.

During its stage 1 scrutiny, the Justice Committee identified a number of weaknesses that needed to be addressed at stage 2. For example, a common criticism from bereaved families was about the long delays before the commencement of inquiries, which can be aggravated by patchy communication from the Crown Office and Procurator Fiscal Service. Concern was expressed about the fact that the Scottish Government did not include a provision reflecting Lord Cullen's recommendation that early hearings should be

held, especially because early hearings would not only require the procurator fiscal to keep relatives informed of the progress of the investigation but would, crucially, focus attention on holding the FAI as quickly as possible.

However, following the commitment of the Solicitor General to produce a milestone charter outlining what families can expect from the COPFS in relation to timings of investigations and decision making, the committee came to the view that early hearings are no longer necessary.

In relation to FAIs into deaths abroad, the Justice Committee questioned the requirement that the body must be repatriated to Scotland for the FAI to be held. Taking into account evidence that occasionally exceptional circumstances would render that impossible, the Scottish Government amended the bill accordingly at stage 2.

I turn to the stage 2 amendments on legal aid for families and the amendments on mandatory inquiries—albeit with an opt-out for the Lord Advocate—into the deaths of individuals who have been detained compulsorily under mental health legislation. The recommendations from Lord Cullen were not provided for by the bill as introduced, but amendments to provide for them were voted for by a majority of the Justice Committee at stage 2. I still consider that the amendments relating to mental health detainees struck the right balance between ensuring that the mandatory FAI would not be carried out unnecessarily and ensuring the protection of the deceased's rights. Moreover, the amendment that dealt with legal aid recognised that the Lord Advocate represents not the interest of the families but the public interest.

Today, the Scottish Government has overturned both those amendments. Two consequences will flow from that, the first of which is the laying bare of the total absence of checks and balances in the decision making of this Scottish National Party majority Government. That continues to be, justifiably, an issue of grave concern.

Christian Allard (North East Scotland) (SNP): It has been said by Margaret Mitchell and in other contributions that, somehow, this has not been a proper democratic process. However, it has been. A Government cannot accept everything that the Opposition wants; if it did, the bill would be an Opposition bill. What is the point of being in Government if the Government cannot direct some part of the legislation? Some parts are approved—some parts are not. I also remind the member that she herself has a member's bill that has been accepted.

The Deputy Presiding Officer: Point made. Thank you very much.

Margaret Mitchell: The point is that the SNP has a majority on seven out of nine subject committees in the—

Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP): What about Westminster?

Margaret Mitchell: I accept Ms Grahame's sedentary remark, but there are checks and balances in the Westminster Government; indeed, that has been proved quite recently by decisions that have been made by the House of Lords. The point is that there are no checks and balances on this majority Government, because we were never supposed to have a majority Government. As a result, we have had this despicable decision on Patricia Ferguson's amendment on legal aid.

James Dornan (Glasgow Cathcart) (SNP): Will Margaret Mitchell give way?

The Deputy Presiding Officer: The member is just closing.

Margaret Mitchell: There is no doubt that individuals who are detained under mental health legislation are among the most vulnerable people in society, but today the SNP Government has ensured that they will not be afforded the same protections as criminals who die in custody. Although the bill will, in general, have a positive impact on bereaved families' experiences of the FAI system in Scotland, I believe that the Scottish Government can take little comfort or pride in how it has discriminated against vulnerable mental health detainees.

The Deputy Presiding Officer: We now move to the open debate.

16:22

Christian Allard (North East Scotland) (SNP): I have already made the point, but I will make it again: it is very important that members understand the strength of this Parliament, particularly in respect of the fact that Opposition members can introduce member's bills. That is fantastic—it is a very great thing. Not only that—I will come back to this at the end of my speech—but a person can, by giving evidence to a committee, change a bill. It is quite incredible that not only Opposition members but people who give evidence to committees can contribute to the drafting of a bill. I am, of course, talking about retired Flt Lt Jones.

As a member of the Justice Committee, I am delighted to see the passage of another of the many bills that the committee has scrutinised this year. I thank committee members and the clerks, who will be delighted that this is the second stage 3 that we have done this week.

The bill will modernise the fatal accident inquiry process and make it effective, efficient and fair. I think that, following recent events, it is right that I remind Parliament that the interest of families in a fatal accident inquiry is in ascertaining the circumstances around and the cause of a death. The primary concern for all of us must be that we do not confuse a fatal accident inquiry with procedures in civil courts in which questions of blame are addressed. It is very important that we see that principle through, but it is clear that at stage 1, stage 2 and now stage 3, some members have wanted to move towards a more adversarial kind of inquiry. I do not think that that will help the process; it will certainly not help the family to get more of an understanding from the process.

There are two things that I would like to address quickly—one has been mentioned already. Scotland will be the first jurisdiction in the UK to allow inquiries into deaths that have occurred abroad without repatriation of the body of the deceased. It is important that families and the public understand that that will be the case only in exceptional circumstances. As the minister said, we have gone beyond the practice in England and Wales, and quite rightly so. He also said:

“it is a very important advance that that possibility should exist, particularly as that is not the case in England and Wales.”—[*Official Report, Justice Committee*, 3 November 2015; c 19.]

I very much welcome that, and the reassurance that it will give to many people in Scotland and people who are working abroad in sometimes challenging conditions. I am thinking in particular about oil workers from the north-east of Scotland who work across the world.

The second point that I would like to address concerns retired Flt Lt James Jones, who gave evidence to the committee. It is fantastic to see that one person can make so much difference. I very much look forward to the passage of the order under section 104 of the Scotland Act 1998 that will ensure that those who risk their lives for us can be assured of appropriate inquests. That is particularly important when we ask them again and again to make the ultimate sacrifice overseas. Once again, I thank retired Flt Lt James Jones for coming to the committee because, without his efforts, that provision might not have been possible.

The lessons of the past have been learned, and I look forward to a fair settlement for service personnel in Scotland.

16:26

Patricia Ferguson (Glasgow Maryhill and Springburn) (Lab): This afternoon, when we pass the bill—as we will, with Labour support—we will

make some significant changes to the FAI system. However, I cannot help but observe that we have missed the opportunity to make some radical and important changes to the FAI system at the same time.

Lord Cullen's review, which the Scottish Government ordered, was a good one, but as colleagues probably know, it did not go far enough for me. However, it obviously went too far for the Scottish Government.

As members know, I introduced a bill on this subject. I am grateful to the clerks to the Justice Committee for their assistance with that and to the legislation team in the Parliament, as well as to Patrick McGuire of Thompsons Solicitors, who was most helpful. I also thank the members of the committee, who were helpful and accommodating and carefully considered the bill that I proposed. As members know, the committee's decision was that the best vehicle to take forward some of the issues was the Government's bill, and the committee urged us to co-operate to take forward the issues that were being discussed.

The areas on which we agreed, such as the charter, will make a difference to families. The charter will make it easier for them to understand the process and get information in advance of an FAI and, I hope, during the process. The annual report of the recommendations that are made by sheriffs in considering fatal accident inquiries will also be important. I am glad that the Government eventually agreed that that report should be laid before Parliament because, if we are not going to do post-legislative scrutiny of bills such as this one, it is important that we at least consider the outcomes that are laid before us.

I am extremely disappointed that the Government did not agree to accept my stage 2 amendment about civil legal aid. We have perhaps rehearsed the debate on that enough this afternoon, but it is remarkable that, although—rightly—someone who has perhaps been involved in the death of a person in custody will still get legal aid, bereaved families whose family member has died as a result of an accident at work will not have legal aid guaranteed to them. The Parliament has done those families a disservice today.

Others have referred to this point already, but there is an important question about scrutiny in the Parliament. I will not make a big point of this but, when all the Opposition parties agree that there is a point that is worth pursuing and do so because they have a genuine concern and have aired and discussed the issues, it is sad that the Scottish Government has chosen to use its majority to vote that down. I have no compunction about saying that I know that the relevant amendment was agreed to at stage 2 only because there is no Government majority on the committee. I am

grateful to all those members who gave the matter careful consideration, whether or not they voted for the proposal in committee or today.

My interest in FAIs was sparked by the death of nine members of the community at the Stockline factory in my constituency and the terrible wait that the families had for a fatal accident inquiry. Elaine Murray mentioned that. I hope that the recommendations that we agree to today and the bill that will emerge as a result of our deliberations will ensure that, in the future, families do not have to have the experience that those nine families had over a prolonged period of four years.

16:31

Alison McInnes (North East Scotland) (LD):

The legislation that governs the fatal accident inquiry system is nearly 40 years old, and it has been six years since Lord Cullen reported on his review into the matter. Therefore, we can all agree that the bill has been a long time in coming. I am pleased that we have finally reached the home straight in reforming and modernising the FAI system.

At the outset, I praise Patricia Ferguson for the work that she undertook, the tenacity that she showed and her professionalism in the work that she did, which, ultimately, led to this Scottish Government bill. The bill as introduced included a number of improvements to the fatal accident inquiry system. It set out the requirement to hold a mandatory FAI for the death of a child in secure accommodation and for deaths under police arrest. It allowed FAIs to be reopened if new evidence was found and it required bodies that were affected by a sheriff's determination to formally respond and set out what actions they had taken. Those were all welcome improvements.

However, as other members have said, not all of Lord Cullen's recommendations were included. In particular, the decision was taken not to include within the mandatory category the deaths of people who were detained under mental health legislation. That changed at stage 2 but was reverted this afternoon during consideration of stage 3 amendments. As I said earlier, I have concluded on balance that there is a more proportionate and less distressing way to proceed that involves reform of the whole system of notifications and investigations.

Nevertheless, the debate that was generated has been worth while, and I am sure that there is a greater understanding among all involved that a more rigorous and coherent system for investigating the deaths of those who are detained for mental health reasons is required. An additional safeguard has already been put in place

whereby all deaths of people who are detained under the Mental Health (Care and Treatment) (Scotland) Act 2003 and the Criminal Procedure (Scotland) Act 1995 will end up on the procurator fiscal's desk for his attention. I also welcome the minister's assurances this afternoon about the timetable for the review and hope that the review will pay particular attention to deaths by suicide while people were detained.

At stage 2, I pressed the minister on whether it would be appropriate to extend the requirement to hold a mandatory FAI to two further categories: the death of a child who was looked after by the state, even if they lived with their parents or guardians at the time of their death, and—this is a niche area—the death of a patient with dementia who, immediately before their death, received prolonged treatment using psychotropic medication. We know that such medication causes sedation, confusion and movement difficulty and that the overuse of those drugs in such situations has been implicated in an increased risk of stroke. A number of organisations, including the Mental Welfare Commission, have raised concerns about the widespread use of those drugs in care home settings, and the most vulnerable people in our society deserve our attention. I was pleased, in relation to both those categories, to receive assurances from the minister that attention was focused on those areas, and I therefore did not press my amendments.

I welcome the Government's recognition of the need for a national child death review system to review the deaths of all children and young people and not just those in care. I understand that the steering group's work to develop a model for that system is on-going, and I look forward to learning of its outcomes. I was also grateful to the minister for acknowledging that the prolonged use of psychotropic medication for dementia patients could be explored in the wider review, and I will continue to pursue the matter.

As I said, Patricia Ferguson was tenacious in her pursuit of improvements. Like her, I am disappointed that the amendment on legal aid that she secured at stage 2 has been removed this afternoon. Nevertheless, she should feel content that she has improved the original bill.

Fatal accident inquiries are held in the public interest, but behind every death is a family and those who knew and loved the deceased person—people who are seeking answers. Ms Ferguson's amendments will ensure that they will be part of the process and kept informed.

Overall, I support the bill and the changes that it will make to the current system. The Lib Dems will support the bill at decision time.

16:35

Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP): I hear rumblings about the Scottish National Party's overall majority. For eight years in here, we had a Labour-Liberal coalition majority, with a majority on every single committee. I cannot recall—on any occasion—ever managing to get an amendment through. Let us just park that one for a start, because there is no overall SNP majority on the Justice Committee.

Elaine Murray: Will the member take an intervention?

Christine Grahame: No, I am going to proceed, because I have heard enough. We had eight years of that approach.

I very much welcome the legislation and commend the work of Justice Committee members, which has increased the relevance and potency of the bill. I congratulate Patricia Ferguson, because much that she did in pursuing her own bill persuaded the Government to change its legislation. Indeed, Paul Wheelhouse is a minister who listens and who collaborates, where possible, with other members who do not always agree.

Deaths of service personnel have been mentioned. We had the bizarre situation in which there could be a discretionary FAI for Scottish service personnel who died outwith the UK, but no discretionary FAI if they died in service in Scotland. In fact, there could be an inquiry in England, but nothing in Scotland. To the best of my knowledge, the only FAI that has taken place involving Scottish service personnel was the Mull of Kintyre Chinook helicopter crash, and that was simply because civilians were on the helicopter.

It is wonderful that we are to move away from that approach. I congratulate Westminster—it is not often that members will hear me say that—because it is going to move a section 104 order under the Scotland Act 1998. That relates to schedule 2 of the bill. That will be welcomed not only by families, but by the wider Scottish community. However, will the minister confirm that the change will apply to historical cases of the deaths of Scottish service personnel in Scotland? Will we be able to have FAIs into incidents that have already taken place?

My colleague Christian Allard referred to FAIs into deaths of Scottish residents abroad. Again, it seemed bizarre that a body had to be brought home for a discretionary FAI to be held. Obviously, there are circumstances in which there is no body to retrieve, for example if someone is lost at sea. If it is possible to pursue a discretionary FAI without a body, why not do that? I am glad that the Government has moved on that issue.

I turn to Patricia Ferguson's bill. As I said, much that she did persuaded the Government to move in its legislation. The family liaison charter is very important. The idea of making the sheriff's recommendations binding was initially attractive, but once we went into the detail, we began to realise that there would have been huge unintended consequences—and not only in terms of the parties that might have to be called to an FAI, widening its scope enormously.

For example, let us say that a widget was found to be faulty. The FAI could ask who manufactures these widgets and who operates them. It could involve people all over the world. Suddenly, there is a raft of ramifications, with all those people coming into it. That makes the proposal difficult. Now recommendations and the responses to them will be published, but the reality is that many faults that take place will be remedied before the issue even gets to an FAI, because it would be a very foolish employer that did not, as soon as an incident happened, look to his practices.

Time limits were another issue. There would be huge problems in having mandatory time limits for FAIs. For example, there are many questions about whether the bin lorry FAI went ahead too quickly. There can be good reasons why an inquiry might not be done straight away. A health and safety inquiry or an aviation inquiry, for example, may be necessary before an FAI and for the Crown Office and Procurator Fiscal Service to decide whether to go any further with a prosecution.

I support the bill. The original legislation is so old. That does not necessarily mean that all statute is past its sell-by date, but that piece of legislation is.

16:39

John Finnie (Highlands and Islands) (Ind): Article 2 of the European convention on human rights creates a right to life and, with it, the duty on the state to investigate the loss of life. That is a duty that our state has not taken lightly, does not take lightly and will not take lightly in the future.

During the passage of the bill, there were a number of interesting discussions, of which the discussion on mental health was one. Members have been willing to move their positions on various matters throughout the process. I have certainly been persuaded to do so. That shows the nature of the scrutiny that has taken place and the willingness to engage. I am pleased about that.

Like many members, I commend Patricia Ferguson. The family charter—the milestone charter—is significant. It will be a challenge for the Crown Office and Procurator Fiscal Service to

service that properly, because dealing with any death is an emotive thing.

The minister talked about the history of the legislation. The bill forms part of an evolving situation. Lord Cullen reported in 2009 and some administrative issues were initially picked up. However, the bulk of his recommendations required primary legislation. That is why we have reached this point, and we know that the Scottish Government did not take up all his recommendations.

I was happy to lend my support to making legal aid available. Of course I am disappointed about what happened on that. Who knows what a future Green majority Administration will do when it comes to wielding power? It is a case of arithmetic.

Christine Grahame: There will not be any aeroplanes.

John Finnie: Christine Grahame is right that there will not be any aeroplanes.

Members' experiences are all different. I have experience of an FAI into a death in custody. It was a harrowing experience for everyone who was involved. I was there to ensure that the federated ranks were represented, and they were indeed represented by a lawyer. The finding was that there had been no disregard for the welfare of the individual who sadly lost his life—quite the reverse—but it was a searching experience for everyone. An FAI is certainly not a forum for laypeople—that is the most important thing for me to say—so Elaine Murray's stage 2 amendment on trade union and staff association representation, which has now been refined, is welcome.

Another matter that may sound dry but which is important is case management. The less trauma that can be associated with the process, the better.

The provisions on allowing FAIs to be reopened and reconvened are important. I have already dealt with an inquiry from a constituent about an historical case. It is clear that the provisions in the bill will not apply to that case, and we need to send a message that the bill will not cover FAIs that are covered by the 1976 act.

Any death is traumatic, but a death where there are no remains is additionally traumatic. Many of the issues that relate to the absence of a body have been sensitively dealt with, which will be reassuring to people.

I imagine that families are completely unconcerned whether an inquiry is mandatory or discretionary, because they just want answers. The family charter will play an important role in that regard. Likewise, the provisions on deaths

abroad, including those of service personnel, are to be welcomed.

There was a lot of discussion about FAI findings, on which Christine Grahame touched. Our initial thoughts on what can or cannot be achieved are often shaped by what we hear. There are challenges in that regard, but the important point is that the initial purpose of an FAI is to understand the cause of the death and to put in place mechanisms to avoid a repetition.

Public interest is also important, as is public reassurance. The bill will play its part in providing some public reassurance, and I will certainly support it at decision time.

16:43

Annabel Goldie (West Scotland) (Con): I welcome the stage 3 debate on the Inquiries into Fatal Accidents and Sudden Deaths etc (Scotland) Bill and I share in the tributes that have already been paid to the Justice Committee, Patricia Ferguson and the many witnesses and stakeholders who helped to inform the legislative process.

As the bill concludes its parliamentary passage, it is worth reflecting on its purpose, which is to implement the 36 recommendations of the Cullen review that require primary legislation some six years after they were published. The review was timely because the relevant legislation was elderly and had not necessarily kept pace with other developments in the justice system, not least the incorporation of the European convention on human rights into UK law.

The test is whether the bill achieves the policy objective of reforming and modernising the law that governs the holding of fatal accident inquiries in Scotland. My party's assessment is that it does that, and we shall support it at decision time. There are some very positive and noteworthy provisions in the bill, not least the requirement that sheriffs' determinations should be published and that anyone who was party to the inquiry and to whom a recommendation is addressed should have to respond accordingly. Just as the Justice Committee did at stage 1, I urge the Scottish Government to find ways of ensuring that sheriffs' recommendations are respected.

At stage 2, Patricia Ferguson lodged a welcome amendment to the bill to place a statutory obligation on the Lord Advocate to produce a family liaison charter. The issues surrounding the Crown Office and Procurator Fiscal Service's often intermittent communication with bereaved families are well documented. Although numerous reasons can undoubtedly be adduced for such spasmodic contact, it exacerbates what is already an extremely difficult and sensitive time for relatives,

so the cross-party support for that amendment was very welcome, and I join other members in acknowledging Patricia Ferguson's considerable work to reform FAIs.

I was troubled by the removal from the bill of Patricia Ferguson's provision to ensure that families receive legal aid. I think that FAIs are an entirely different beast from civil litigation hearings, and I am not sure that that distinction was appreciated.

I want to comment briefly on what the Justice Committee said in its stage 1 report on the lack of clarity surrounding the purpose of an FAI that is held in the public interest. There is a real misunderstanding in this area, which serves to raise the expectations of families. There needs to be greater transparency, and there is an obligation on the parties involved to provide that. How does the fatal accident inquiry relate to other investigations involving fatalities and to the role of the family or families affected? Greater transparency would help to demystify a complex system, while at the same managing the expectations of what the inquiry will ultimately achieve.

Despite the fact that they received support from all but the SNP members of the Justice Committee, Margaret Mitchell's stage 2 amendments were removed in toto from the bill today. I noted the minister's comments that the provisions did not attract wide support from stakeholders, although perhaps that is because the policy intent was not fully understood.

It is worth noting that Lord Cullen acknowledged that FAIs should be held into the deaths of those who are detained by the state, especially those who are most vulnerable, and that such FAIs are in the public interest. My colleague Margaret Mitchell sought only to put that recommendation on a statutory footing. It is unfortunate that that has been overturned, and it has implications for our unicameral parliamentary system, for the robustness of scrutiny and for the legitimate power and authority of a scrutinising committee by majority to change a bill. Airbrushing out such change at stage 3 is unimpressive.

That said, the bill is a good one that will receive the support of my party, and it will have a positive impact on the system of FAIs in Scotland.

16:48

Graeme Pearson (South Scotland) (Lab): The absence of rancour in the debate and the support that exists across the chamber for the bill reflect well on the work that has been done by the members of the Justice Committee, my colleague Patricia Ferguson and those who gave evidence to the committee at stages 1 and 2.

We do well to remember that some 5,000 deaths a year are reviewed by the authorities and that somewhere short of 60 of them are subject to fatal accident inquiries. We should remember that the FAI is designed, quite properly, to determine the circumstances of a death, not to apportion blame. However, as John Finnie indicated, an FAI can be extremely difficult and upsetting for family members, close friends and those who were involved in the circumstances surrounding a death. They hear details—often for the first time—that have implications for how they might respond to the evidence.

In examining the circumstances of a death, it is right that a sheriff should act in a thorough and proper manner to examine all the circumstances of the death, and that can sometimes be extremely harrowing.

In those circumstances, it is good to know that general agreement has been achieved on some important elements. The evidence of the British Medical Association, the Scottish Association for Mental Health, the Mental Welfare Commission for Scotland and others has helped to point the Parliament in a direction that will ensure that a fatal accident inquiry will not be held in all circumstances in which someone who faced mental health conditions died.

The opportunity for the Crown to intervene in the appropriate circumstances to decide on a fatal accident inquiry is appropriate and commensurate with the circumstances that we face annually. I have confidence that is based on experience that the Procurator Fiscal Service has the ability to make the appropriate decisions in most circumstances.

Elaine Murray's amendments provided value to the discussion in enabling the ventilating of all the issues. I am happy that, at the end of the process, we have come to a decision that I certainly feel comfortable with.

The Government's agreement to include representation from trade unions and staff associations in relation to relevant deaths while people were engaged in employment is a very helpful way forward in advising how we should deal with them.

The other important element has been establishing grounds for the investigation of deaths of citizens that occurred abroad. That subject has caused a great deal of upset for many families in Scotland to date. Seeing some form of solution is important and should give comfort to many relatives.

I am disappointed that amendment 1, in the name of Patricia Ferguson, which was an attempt to provide some kind of equality of representation, was rejected. The issue has been fully ventilated,

and I do not intend to go into the circumstances again, but I have certainly been present when procurators fiscal have made it clear to families that they were there to represent the public interest, not the families' concerns. Families have found that very difficult to understand. I implore the minister to ensure that the family liaison charter is seen as very valuable guidance for the fiscal service in future so that its culture can take on board the changes in the responsibilities that we expect of it in dealing with fatal accident inquiries.

The minister's reference to the duties of coroners in England and Wales did not assist the debate. That was largely irrelevant, as the system in Scotland has always been different and families have always had a more positive experience here. We should invest in those circumstances rather than rely on the comfort that it is worse elsewhere. I am not particularly interested in how the matter is dealt with in other jurisdictions, unless that advises us of ways to improve ours.

To return to Patricia Ferguson's amendments, I hope that the Government will bear that in mind. If experience tells us that we have gone in the wrong direction, and if we find that relatives who meet the new circumstances are challenged, as I suspect they will be, we must make an early change to make legal aid the norm.

The presence of lawyers at fatal accident inquiries does not necessarily mean the introduction of new conflicts. If the nature of fatal accident inquiries and the purpose of holding them are made clear to lawyers—if it is made clear that they are there to determine the facts and not to engage in legal exchanges—I am sure that we can find a more productive way of going forward.

In conclusion, I make it clear that we support the principles behind the bill and will vote in support of it. I am grateful to the minister for his approach in dealing with many of the questions and exchanges that have occurred during stages 1 to 3.

The Presiding Officer (Tricia Marwick): I call Paul Wheelhouse to wind up the debate. I can give you eight minutes, Mr Wheelhouse.

16:54

Paul Wheelhouse: I record my thanks to members for their contributions to the debate.

Before I go through the detail, it is important to address the point that Graeme Pearson raised about procurators fiscal being able to point people towards legal aid. I will consider that and see what we can do with the Crown Office and Procurator Fiscal Service and the Scottish Legal Aid Board to ensure that people are aware of the options that are available to them if they feel that the procurator fiscal will not take forward a certain line

of questioning. I have tried to reassure members that we are aware of the issue, but I will take forward that point and see whether there is something that we can put in the family liaison charter to make that more explicit.

The bill provides the legislative framework that is needed to implement Lord Cullen's recommendations. Of course, the detail of the procedure will be provided in comprehensive bespoke rules that will be written purely for fatal accident inquiries, whereas, until now, such inquiries have had to rely on the ordinary cause rules in the sheriff court.

Dr Murray raised a point about the delay in introducing the bill, although I should stress that it is a perceived delay. Inevitably, the bill had to wait in a queue of civil reforms, including the Courts Reform (Scotland) Act 2014. It was not delayed until such time as Patricia Ferguson's member's bill was introduced—that was perhaps a happy coincidence, if I can put it that way. We were certainly glad to work closely with Patricia Ferguson. I appreciate the hard work that she put into her bill and the constructive approach that she took after withdrawing her bill in working with the Government on amendments.

The bill builds on the recommendations that Lord Cullen directed to the Crown Office and which have already been implemented by the establishment of the Scottish fatalities investigation unit, which now oversees death investigations in Scotland. The Crown Office has also made a major contribution to the reforms by bringing forward its family liaison charter, which as a result of an amendment by Patricia Ferguson will be put on a statutory footing. The charter, which the Solicitor General for Scotland announced when she gave evidence to the Justice Committee at stage 1, will provide clarity on the information that the bereaved family will be provided with at the different stages of a death investigation. That is why it is possible to foresee information about legal aid being slotted into it. The charter will also give clarity on how and when that information will be communicated to the bereaved family by the Crown Office. It will give choice to bereaved families on how they want to communicate with the Crown, which is important.

I thank the Crown Office for expediting its work on the charter, which included a public consultation on a draft charter over the summer, so that it was available in time for stage 2. As I said, as a consequence of an amendment, the charter will be on a statutory footing. It is entirely appropriate that the Crown Office should take the lead on such matters, given the position of the Lord Advocate as the independent head of the system of death investigation in Scotland. It is

worth remembering that section 48(5) of the Scotland Act 1998 makes it clear that

“Any decision of the Lord Advocate in his capacity as head of the systems of criminal prosecution and investigation of deaths in Scotland shall continue to be taken by him independently of any other person.”

It is important to note how fatal accident inquiries fit into other investigations of death in Scotland. As has been said, procurators fiscal have a common-law duty to investigate all sudden, suspicious, accidental and unexplained deaths to establish the circumstances and cause of death. Around 11,000 deaths are reported to the Crown Office and Procurator Fiscal Service each year and it investigates about half of those. Some cases are also investigated by other agencies, including the Health and Safety Executive, which Christine Grahame referred to, the air, marine and rail accident investigation branches, the Care Inspectorate and of course the Mental Welfare Commission for Scotland. That sometimes causes a delay in the commencement of a fatal accident inquiry, but those are all important investigations. The Crown Office engages with those agencies and may instruct the police to investigate the circumstances and consider whether criminal charges should be brought, which may lead to a prosecution.

Consideration of criminal proceedings takes primacy, but investigations by the Crown are often held up and delayed by investigations by, for example, the air accidents investigation branch. Members will be aware that there was a considerable delay before the AAIB produced its report into the Clutha tragedy in Glasgow. Those delays are a matter of regret, as they lengthen the period of time before a fatal accident inquiry can take place.

I turn to some of the points that were raised in the debate. Christine Grahame, Christian Allard, Graeme Pearson and John Finnie referred to the issue of deaths abroad. The Justice Committee queried the requirement for the body to be repatriated before an inquiry could be held into the death of a Scot abroad, and I agreed that there may be occasions when a body has been lost or is otherwise not available for examination at a post mortem.

I pay particular tribute to Mr and Mrs Beveridge, who gave evidence to the Justice Committee at stage 1. It was a very brave thing to do. The death of their son Blair Jordan in harrowing circumstances was extremely distressing for them to deal with and I am very grateful to them, as I am sure are members of the Justice Committee, for sharing their personal experience. I hope that Mr and Mrs Beveridge will take some satisfaction from what has happened today, although it will not benefit their family—that would have required

retrospective legislation—because it means that if someone dies in a situation similar to the one in which Blair died, the Lord Advocate will have discretion to hold a fatal accident inquiry.

Circumstances in which a body has been lost at sea will also be covered. It is right that in such exceptional circumstances the possibility of a death investigation and the potential for an FAI into a death abroad should not be lost. For that reason, we proposed the amendment at stage 2 that removed the requirement for a body to be repatriated before a fatal accident inquiry can be held. We hope that that will help relatives.

The Government recognises the need for bereaved families to be kept informed of progress with death investigations, and we think that the Crown Office's charter will provide reassurance and enhance public confidence in the system. The charter will provide information about the system and timescales to families, and it will be written in a way that is understandable and accessible to everyone. I hope that that goes some way towards addressing the concern about timescales that Patricia Ferguson expressed in her bill proposal, in that the charter will ensure that families are at least aware of what to expect, with no nasty surprises in relation to delays that are encountered, and are kept informed throughout the process of the likelihood of a criminal prosecution.

Christine Grahame: I know that the minister is about to run out of time, but before he does, will he answer my question about the death of service personnel in Scotland, for whom mandatory FAIs were not available?

The minister is indicating that he is coming on to that, which is excellent. I will sit down.

Paul Wheelhouse: On whether the legislation in relation to military FAIs will be retrospective, the answer is no. A discretionary FAI will have been considered at the time of the incident. However, I hope that the armed forces community and families will take comfort from the fact that in the event of the death of service personnel in Scotland in future, a fatal accident inquiry will be mandatory.

Alison McInnes referred to the child death review system. The Scottish Government child death review working group has submitted its report to the Scottish ministers, which is currently being considered by the Scottish Government. I hope that it will not be long before the outcome is made available.

The bill will ensure that FAIs remain fact-finding, inquisitorial judicial hearings, which are held in the public interest to establish the circumstances of sudden, suspicious or unexplained deaths, and deaths the circumstances of which cause public concern. FAIs are not meant to hold people to

account, as the media occasionally mistakenly suggest, nor are they held specifically to provide answers for bereaved families, although they will normally do so. Questions of blame or guilt are for civil or criminal proceedings. FAIs are held in the public interest to establish the cause of death and to permit the sheriff to make recommendations as to how deaths in similar circumstances might be avoided in future.

The bill will also ensure that the system is in keeping with other justice reforms, including the use of specialist and summary sheriffs, preliminary hearings and early agreement of uncontroversial facts, along with greater scope for location and accommodation of FAIs. When taken together with the section 104 order and the new FAI rules that the Scottish Civil Justice Council will bring forward next year, the bill represents significant modernisation and reform of the law on fatal accident inquiries. I commend the bill to the Parliament.

Point of Order

17:03

Neil Findlay (Lothian) (Lab): On a point of order, Presiding Officer.

I wonder whether you can help, Presiding Officer. We have been notified today that the legislative consent motion that was proposed in relation to the Trade Union Bill has been rejected by you and the parliamentary clerks. There is clearly a will across this Parliament to reject the Trade Union Bill, which will have an impact on functions of Government, particularly in relation to payroll deductions, facility time and a range of features that are clearly the preserve of the Scottish Government.

Will you advise on how we can get a legislative consent motion before this Parliament? With one or two exceptions, there is cross-Parliament support for rejecting the bill. It is only the rules in the standing orders of this Parliament that are preventing that from happening. The Parliament should be able to change the rules, to ensure that we can reject the bill. I seek your ruling.

The Presiding Officer (Tricia Marwick): Thank you for your point of order, Mr Findlay. It was my decision that it is not a relevant bill and so no LCM can be lodged. The Parliament has other ways of discussing the matter and I am sure that the Government and any other interested parties will take those discussions forward. There is no possibility of an LCM being lodged in the Parliament because it is not a relevant bill.

Patricia Ferguson (Glasgow Maryhill and Springburn) (Lab): On a point of order, Presiding Officer. I would be grateful for your clarification on why it is not an appropriate bill. If it is merely a matter for the standing orders of this Parliament, would it not be possible to ask the Standards, Procedures and Public Appointments Committee to consider a change to standing orders to allow the LCM to be taken?

The Presiding Officer: I have set out all my reasons in my letter to the cabinet secretary. Any member can have a look at that letter, as I have asked for it to be lodged in the Scottish Parliament information centre.

It is not simply a matter for standing orders. On that point, I now move to decision time.

Neil Findlay: On a point of order, Presiding Officer.

The Presiding Officer: Is this a further point of order or is it the same point of order?

Neil Findlay: Presiding Officer, you are referring to a letter that many members have not

seen. It is only right that members see the letter, so that we can decide how to take the matter forward. When will you provide it to all members of the Parliament?

The Presiding Officer: When you leave here tonight, Mr Findlay, you can go down to SPICe where the letter has been available to every member since before 2 o'clock this afternoon.

Decision Time

17:06

The Presiding Officer (Tricia Marwick): The question is, that motion S4M-15113, in the name of Paul Wheelhouse, on the Inquiries into Fatal Accidents and Sudden Deaths etc (Scotland) Bill, be agreed to.

Motion agreed to,

That the Parliament agrees that the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Bill be passed.

Meeting closed at 17:06.

This is the final edition of the *Official Report* for this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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