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Scottish Parliament

Thursday 25 May 2017

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

General Question Time

Good Food Nation Bill

1. **Richard Lochhead (Moray) (SNP):** To ask the Scottish Government what the timetable is for the good food nation bill, and whether it will include addressing the health implications of multibuys. (S5O-01029)

The Cabinet Secretary for Rural Economy and Connectivity (Fergus Ewing): Work has begun to prepare a consultation that will inform the content of the good food nation bill. Decisions on the bill timetable will be taken in the context of the Government's overall legislative programme. The content of the bill will be informed by the outcome of the consultation and by any actions required to give effect to a range of Government priorities.

Richard Lochhead: The cabinet secretary will be aware that many organisations, including the Scottish food coalition, and many individuals are keen for the good food nation bill to help to transform our food culture. Despite the fact that we have had the beginnings of a food revolution in this country in recent years, there is still much more to do to tackle food poverty, obesity and other issues. Is the cabinet secretary aware of the Cancer Research UK paper that has been published in the past few days that indicates that 40 per cent of all calories are consumed as a result of price promotions for unhealthy foods in supermarkets? It also points out that seven in 10 Scottish adults support banning promotions of unhealthy foods in our supermarkets. Is that the kind of issue that he believes the bill can address? Is there any short-term action, which would be even better, that the Scottish Government can take to address that important issue?

Fergus Ewing: Richard Lochhead is quite right to mention that report. I have not studied it: it is within the purview of my colleague Aileen Campbell, who has responsibility for public health, and I know that she will take the matter seriously. Just last week, I met representatives of the Scottish food coalition to discuss their ideas for inclusion in the bill. I have invited the Food Commission to provide advice on the bill to ministers, and would welcome contributions from members of all parties across the Parliament, because this is a great opportunity for Scotland to

develop measures to improve our nutrition and food health.

Brian Whittle (South Scotland) (Con): In addressing food multibuys, we have to differentiate between the types of food that we do not want people to eat and those that we want them to eat—we should be encouraging multibuys of fruit and vegetables and other healthy foods. Will the good food nation bill address public procurement of food for our schools and hospitals to ensure that local food is procured wherever possible?

Fergus Ewing: Mr Whittle, given his former career as an international athlete, is well placed to be an advocate for good choices in dietary matters. He is absolutely right to raise those issues, which are taken seriously by all members of the Scottish Government.

On Brian Whittle's second question, I recently convened the first summit on food procurement, which was to ensure that in the public sector—in our hospitals, our schools and in Government and public sector institutions—we procure as much of our food as possible locally. We have made considerable progress over the past 10 years by increasing take-up of local produce from Scottish farmers and other primary producers by a substantial margin. That work is on-going.

Transport (Rural Areas)

2. **Mairi Evans (Angus North and Mearns) (SNP):** To ask the Scottish Government what action it is taking to improve access to transport for people in rural areas. (S5O-01030)

The Cabinet Secretary for Rural Economy and Connectivity (Fergus Ewing): We are committed to improving rural transport. That is reflected in our ambitious plans to dual both the A9 and the A96, in major investments such as the Borders railway, in on-going subsidies of more than £1,000 million per annum for public transport and other sustainable options generally, and in periodic reviews of our legislation, strategies and policies, such as the current review of the national transport strategy.

Mairi Evans: I asked my initial question because two weeks ago, a local bus service that runs from Brechin—which is my home town, in my constituency—to Montrose was cut. Not only was it a valuable service for people who commute to work, but it ran at key times for people who commute from Montrose railway station, which is on the main east coast rail link between Aberdeen and London.

Rural communities have also been impacted badly by bank closures and by the fact that not all towns have jobcentres and other services, so does

the Scottish Government recognise the need to support and preserve rural transport links?

Fergus Ewing: Mairi Evans mentioned a number of things that are absolutely essential to rural life. What she describes causes real problems for her constituents and others, so she is right to do so.

We take the issue extremely seriously. We provide subsidy for bus services through the bus service operators grant, which is paid to operators to help them to keep fares down. For 2017-18, we have increased that budget to £53.5 million. Very substantial funding is given to help local rural transport in particular.

Liam Kerr (North East Scotland) (Con): For older people in rural areas, community and charity buses are often the only direct links to healthcare and other vital services. Does the cabinet secretary support calls from the Conservative Party for access to such services to be increased by extending the free bus pass scheme to community transport?

Fergus Ewing: I certainly recognise the substantial contribution that is made by community bus services—none more so than those in the Strathspey area, where the scheme is, I believe, an exemplar. We would all wish such schemes to flourish and continue, because they provide a very useful service to a great many people in rural Scotland. We therefore support the aims and aspirations that lie behind the question, and I will be very happy to consider any specific and coherent policy suggestions that any member might have.

Road Safety (M74 Junction 21)

3. Oliver Mundell (Dumfriesshire) (Con): To ask the Scottish Government what steps are being taken to improve safety at the junction 21 slip road on the M74 where it joins the B7076. (S5O-01031)

The Cabinet Secretary for Rural Economy and Connectivity (Fergus Ewing): Of course safety is our top priority, and we take our obligations seriously. Following concerns that were raised by Kirkpatrick Fleming and district community council about the safety of the junction, a comprehensive safety review was carried out. Although the review concluded that the junction layout, road traffic signs and road markings were appropriate and complied with current design standards, refurbishment of the road markings at the junction and the road traffic signs was completed in October 2016, and additional signage enhancements have recently been carried out.

Oliver Mundell: I thank the cabinet secretary for that answer. However, given on-going community concerns and a number of serious

near-misses at the junction, will the Scottish Government commit to sending Transport Scotland officials down to look at the site and to meet representatives of the local community councils?

Fergus Ewing: I am informed that in the last three full calendar years there were two slight personal injury accidents on the B7076 at the bottom of the junction 21 northbound off-slip from the M74, both of which took place in 2015. I am, of course, happy for Oliver Mundell to make representations to my colleague Mr Yousaf, who is, primarily, dealing with the matter. Should he wish to make such representations, they will be taken—as they always are—very seriously indeed. However, it is not unreasonable to make the point that it is the responsibility of every driver to observe safe driving practice; the prime responsibility must always rest with every single one of us to ensure that we drive safely on our roads.

Benefit Cap

4. Ben Macpherson (Edinburgh Northern and Leith) (SNP): To ask the Scottish Government what impact the United Kingdom Government's benefit cap will have on individuals and families in Scotland. (S5O-01032)

The Minister for Social Security (Jeane Freeman): The latest Department for Work and Pensions figures for February 2017 show that more than 3,600 households and 11,000 children in Scotland are currently affected by the new cap. Two thirds of those affected are lone parents, and although the average weekly cut is £59, some households are having to cope with losing £200 each week. The fact that that is increasing hardship and difficulty for already vulnerable households and children is unacceptable, and the UK Government should reverse the policy.

Ben Macpherson: I welcome the minister's comments and am glad that she is joining me in calling on the UK Government to reverse the cuts—especially given the damaging impact that they are having on communities, including in my constituency and particularly in north Edinburgh, where people and families with children are facing increased hardship and, in some cases, homelessness as a result of problems to do with the benefit cap and other UK Government welfare reforms. What can we do together to put pressure on the UK Government to reverse the cuts?

Jeane Freeman: As members know from our statements in Parliament, the benefit cap is an issue that we have directly addressed with the current UK Government and will directly address with the incoming UK Government, with respect to the cap's effect and impact on individuals, because the UK Government intends to apply it to

devolved benefits. That is something that we strongly believe undercuts the agreement in the Smith commission and fiscal framework.

I am happy to advise Ben Macpherson that we consistently press the UK Government to reverse policies that operate by assessing need and then choosing not to meet it—which is ironic, in a social security system.

This morning, I have come from a helpful discussion with East Lothian Council on the impact of full roll-out of universal credit on the authority and its residents. I am pleased that we are looking to work directly with our newly elected local authorities and with the Convention of Scottish Local Authorities, as it forms under the new administrations, so that collectively we increase pressure from Scotland on the UK Government to reverse all the changes that it has introduced, and which evidence shows have a direct impact on vulnerable families and children in particular and, of course, on women.

NHS Greater Glasgow and Clyde (Chief Executive Meetings)

5. Mary Fee (West Scotland) (Lab): To ask the Scottish Government when it last met the chief executive of NHS Greater Glasgow and Clyde and what issues were discussed. (S5O-01033)

The Cabinet Secretary for Health and Sport (Shona Robison): I recently met the new chief executive of NHS Greater Glasgow and Clyde, Jane Grant—that was on Thursday 18 May. We discussed matters of importance to local people.

Mary Fee: Last week, the cabinet secretary held a small, invitation-only meeting in Paisley, where she faced strong opposition from local parents and members of the kids need our ward campaign, who are deeply worried and angry about the proposed closure of the children's ward at the town's Royal Alexandra hospital.

In addition, parents and families in Inverclyde are growing increasingly concerned about the downgrading of Inverclyde royal hospital's midwife-led birthing unit. Local residents vigorously oppose the proposed changes, with a 7,000-signatures-strong petition opposing the downgrading of the birthing unit.

The final decisions about the closure of the children's ward at the RAH and the downgrading of the birthing unit at Inverclyde royal hospital lie with the Scottish Government. Will the cabinet secretary consider the anxiety and concern that parents and families across the west of Scotland have expressed and take decisive action to reverse the closure of the children's ward at the RAH in Paisley and the downgrading of the birthing unit at Inverclyde royal hospital?

Shona Robison: I had a productive meeting on 19 May with local parents, who were able to express very directly the issues and concerns that they had. As I said to the parents at that meeting, I would be happy to meet any other concerned local parents. Indeed, we made sure that my contact details were given to anyone taking part in the protest outside the meeting who wanted them. We will liaise with those people and set up further meetings, as required, in addition to a visit that I will make to RAH ward 15.

As Mary Fee rightly said, the decision rests with me. It is quite right that I follow due process, and that I hear people's concerns as part of that. I will take time to do that in coming to a decision about ward 15 at the RAH.

With regard to the Inverclyde birthing unit, Mary Fee should know that Greater Glasgow and Clyde NHS Board has undertaken its own review of maternity and neonatal services in the area and will make a decision on its next steps based on that review. She is being a little pre-emptive in suggesting that those proposals are with me now; they are not—Glasgow has not submitted any formal proposals to me about the birthing unit in Inverclyde. We should allow Greater Glasgow and Clyde NHS Board to undertake its work on maternity and neonatal services and let due process go forward from there.

Stuart McMillan (Greenock and Inverclyde) (SNP): The *Greenock Telegraph* recently reported that employees and consultants have been informally told that the intensive treatment unit, which caters for patients at the IRH who need intensive treatment after an operation, will close in January. Can the cabinet secretary inform me whether that issue was raised with the chief executive of NHS Greater Glasgow and Clyde? Why has there been no official dialogue between NHS Greater Glasgow and Clyde and staff and elected representatives over the plans for the ITU?

Shona Robison: Stuart McMillan will be aware that NHS Greater Glasgow and Clyde responded to concerns and confirmed that there are currently no proposals to alter the services delivered by the ITU at Inverclyde royal hospital. I expect all health boards to undertake proper and meaningful engagement with local stakeholders in the shaping and delivery of healthcare services, and local people can be assured that the national health service in Scotland has well-established guidance on service changes. It remains the case that any proposals that are designated as major changes would have to be the subject of formal public consultation and, ultimately, ministerial approval. I reiterate that there are currently no proposals to alter the services at the ITU at Inverclyde royal hospital and that nothing has come to me.

Maurice Corry (West Scotland) (Con): The future of ward 15 at the RAH has been uncertain since 2011. We support calls for the cabinet secretary to step up and take responsibility by making a decision on the proposal. When will staff, patients and families be informed if services are to be moved to the Royal hospital for sick children?

Shona Robison: If Maurice Corry had listened to my earlier answer, he would have heard me say that the decision lies with me and that the process that I am undertaking at the moment is to listen to local parents and concerned people in the area. I will be undertaking a series of meetings to make sure that those views are heard. I would have thought that he would have welcomed that, because surely he would not want me to make a decision without having heard local people's views, as that would not be giving his constituents a very good service.

Film Studio (Meetings)

6. **Jeremy Balfour (Lothian) (Con):** To ask the Scottish Government how many meetings it has had with production companies since January 2017 regarding locating a new film studio in the Lothian region. (S5O-01034)

The Cabinet Secretary for Culture, Tourism and External Affairs (Fiona Hyslop): The Scottish Government has had no such meetings. However, Scottish Enterprise has had meetings with developers about opportunities as part of on-going work to ensure that Scotland has an enhanced range of studio facilities.

Jeremy Balfour: Does the cabinet secretary believe that we need more than one national film studio in the Lothians? If so, how many does she believe that we need? Will the Scottish Government look at all applications that come forward, giving each equal weight?

Fiona Hyslop: We have committed to supporting a range of studio facilities. In my initial answer, I said that we were looking at on-going work

"to ensure that Scotland has an enhanced range of studio facilities."

We currently have a number of studios; for example, the Pyramids business park in Bathgate was used for "T2 Trainspotting" and facilities in Livingston were used for "Churchill". It is important that we have permanent facilities, and a number are already in development. We certainly want to encourage any private sector developer with an interest in the area to bring forward proposals, and our authorities and public bodies will engage with them.

Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP): Will the

cabinet secretary ensure that, in looking at any part of the proposed location of such a site in Midlothian, full account is taken of the traffic pressure on the A701, which is already congested? It is a bottleneck, with housing developments down the spine. That is causing my constituents, particularly those in Penicuik, great difficulties.

Fiona Hyslop: As the member might be aware, the planning process is not fully completed, so she will understand that I cannot make any detailed comment. The reasons for Scottish ministers proposing to grant planning permission are set out in the Government's letter dated 3 April, which is publicly available. I refer the member to that letter.

Rona Mackay (Strathkelvin and Bearsden) (SNP): What is the public sector doing to make Scotland an attractive place in which to film productions?

Fiona Hyslop: In addition to enhancing studio facilities, we are also making sure that the production fund is enhanced. On top of the nearly £11 million that Creative Scotland invested in 2015-16, we have produced a production growth fund of £3 million, £1.875 million of which has already been awarded. Productions that have benefited from the production growth fund include "T2 Trainspotting", "Churchill", "Hush", "Etruscan Smile", "In Plain Sight", "Loch Ness" and "The Wife". The Scotland-based thriller "Keepers", which stars Gerard Butler, will also receive funding. That will ensure that the Scottish film industry can benefit from the opportunities that films provide to improve skills and build capacity for future film opportunities.

The Presiding Officer (Ken Macintosh): Before we turn to First Minister's question time, members will wish to join me in welcoming to our gallery Mrs Muhterem Aras, President of the Parliament of Baden-Württemberg. [*Applause.*]

First Minister's Question Time

12:01

Engagements

1. Ruth Davidson (Edinburgh Central) (Con):

To ask the First Minister what engagements she has planned for the rest of the day. (S5F-01301)

The First Minister (Nicola Sturgeon):

Members will be aware of the heartbreaking news today that 14-year-old Eilidh MacLeod from Barra was among those who were killed in the Manchester Arena on Monday night. I know that we will all want to send our love and thoughts to Eilidh's mum and dad and to all her family and friends at this dreadful time for them. Our thoughts are also with Eilidh's friend Laura MacIntyre, who remains in hospital.

Later today, I have engagements to take forward the Government's programme for Scotland.

Ruth Davidson: I associate myself with the words of the First Minister. The thoughts and prayers of those on the Conservative benches are with the families of those who lost loved ones on Monday and, today, particularly with the family of Eilidh MacLeod, her friends and the whole Barra community. It is a tragedy that will be felt by everyone on the island, which is a close-knit community that is grieving today.

In my judgment, it would not be right to use today to indulge in the knockabout of an election campaign. However, I believe that we best show our contempt for the tactics of terror by going about our business of practising the very democratic values that bombers seek to destroy, so I would like to use First Minister's question time today to do just that.

With the welfare of young people forefront in our minds, we spoke to the Scottish Youth Parliament yesterday to ask whether there were any issues that it wanted to raise. It is currently campaigning on the issue of young people's mental health and the need to ensure high-quality mental health service provision for all Scotland's young people. What action is the First Minister's Government taking to improve the mental health of young people around Scotland?

The First Minister: I thank Ruth Davidson for the approach that she is taking today. Above all, our young people, their interest and their wellbeing are in our hearts. The Youth Parliament has raised many issues over the years that not only have been of importance to young people in Scotland but have resulted in action by this Parliament, which is to the Youth Parliament's credit.

As members are aware, the mental health of young people—children and adolescents—and ensuring that we meet the demand for services and have high-quality services are at the heart of our mental health strategy. Among many actions, we have given a particular commitment to a national review of personal and social education, of the role of pastoral guidance in schools and of school counselling services to make sure that every child has appropriate access to the right support in school.

Those actions have long been important but, given the events of the past few days, making sure that we have appropriate support for young people who, for a whole variety of reasons, experience stress, trauma and difficulty in their lives is hugely important. The Government is committed to making sure that we do the right things in that regard.

Ruth Davidson: Along with the concerns that were raised by the Scottish Youth Parliament, the Scottish Association for Mental Health launched a campaign this week that highlights the mental health needs of young people. The "Going to Be" campaign points out that three children in every classroom in Scotland will have experienced a mental health difficulty by the time they are 16 years old. It also points out that nearly 7,000 young people were turned away from child and adolescent mental health services last year and warns that, without help, their issues might worsen.

Does the First Minister share the concerns that SAMH has raised? Can she assure SAMH that the concerns that have been raised in that campaign are being taken seriously and are being taken forward?

The First Minister: Yes, I share SAMH's concerns. However, SAMH is a key partner of the Scottish Government in making sure that we take action to address some of these issues.

As I have said in the chamber many times before, many more young people are coming forward for mental health services. I know that that point is accepted and acknowledged across the chamber. We should encourage that, as it demonstrates that the stigma that is associated with mental health is reducing, but it puts an obligation on the Government, our national health service and other agencies to meet that demand.

There are two particular issues in Ruth Davidson's question that I want to respond to briefly. First, on people whose referrals for child and adolescent mental health services are rejected, we have, as members will be aware, given a commitment in our mental health strategy to review rejected CAMHS referrals and a commitment to use that review as a foundation for

further improvements. It is important to point out that there will be a number of reasons for rejecting referrals. Ultimately, that is and always should be a clinical decision—for example, another intervention before CAMHS treatment might be needed—but we want to make sure that our child and adolescent mental health services are working well and are properly joined up with other services so that young people get the care that they need.

The second point is more general. In my first answer, I mentioned the review of personal and social education that we are commissioning. We should all also attach importance to mental health first aid. Mental health first aid training to support staff and young people in educational establishments is being funded by the Scottish Government and rolled out across Scotland by Education Scotland. Its aim is to train staff in secondary schools to increase their confidence in approaching pupils who think that they might be struggling with a mental health problem. That training is very much about complementing other, more formal services.

We are taking a whole range of actions, and I hope that members can unite behind that approach. We know that there is work to do, but we are absolutely determined to get on and do it.

Ruth Davidson: When we discuss such issues, we often talk about money and resources, of course, but it is often about other factors that are not within Government control, too. For example, there is the fabulous work that the scouts, the guides, the Boys Brigade and other youth organisations do, all of which has been shown to have a hugely beneficial impact on young people's mental health. Such organisations change the lives of young people for the better in countless unseen ways and steer them to better choices and happier lives. Does the First Minister agree that, as well as celebrating their work, we should do more to support youth organisations and aim to ensure that, as far as possible, every young person in Scotland has the chance to join one?

The First Minister: Yes, I do. We should pay tribute to the work of organisations such as the Boys Brigade, the scouts, the brownies and the girl guides. I think that we have had the Boys Brigade in the Parliament this week to talk about its work to encourage young people to take part in sport. It does fantastic work. I am aware that I am sitting next to a former member of the Boys Brigade, John Swinney, and I am sure that there are many other former members of the Boys Brigade in the chamber.

It is important to point to the work that such organisations do for a wider reason. It is understandable that, this week, we are talking about unbelievable horror and trauma that young people have suffered—principally those who were

in the Manchester Arena on Monday night. Over the past couple of days, we have commented in the chamber on the fact that children across our country who were nowhere near Manchester will have been impacted by the scenes that they have seen on their televisions.

We should never forget that youth is a time of great joy. It should be a time of great happiness in which young people get to explore. I have read many things this week, including many beautiful and poignant things about young people experiencing the rite of passage of going to their first concert. We must always remember that our principal obligation is to support in every way that we can young people to be young people and to get the most out of life. Organisations such as those that Ruth Davidson mentioned certainly play a very important part in that.

Ruth Davidson: The First Minister touched on this issue earlier. This week, SAMH raised the issue of a lack of counselling services in secondary schools and pointed out that children in Wales and Northern Ireland have guaranteed access to schools-based counselling. Notwithstanding the mental health strategy that the Scottish Government has put in place, SAMH says that children in Scotland are missing out. Earlier this year, we published a paper on mental health that supported the idea of school champions and counsellors being appointed in schools, colleges and universities. In her first answer, the First Minister also referred to moves to improve counselling in schools. Will she give us an assurance today that the Scottish Government will take that forward in good time, so that young people in Scotland will have the same counselling services available to them as young people elsewhere in the UK have?

The First Minister: Counselling in schools is hugely important. In a wider sense, it is also important to recognise that health and wellbeing is one of the core aspects of the curriculum for excellence, so it is embedded in the very curriculum of our schools. However, it is important that we make sure that schools have access to the resources that allow them to support the health and wellbeing of children and young people in a very practical and meaningful way. The review that I spoke about will look particularly at school counselling. I have also mentioned the role of mental health first aid training.

It is important to say that a mental health link person is available to every school. That is achieved in a variety of ways, using different models that meet local needs, so the link worker might be a CAMHS clinician or someone from another specialty such as a primary care worker. The named link person will be able to contact specialist services for advice if they need to do so.

The review that I have spoken about, which is an important aspect of the mental health strategy, will allow us to determine what further action we need to take so that schools have access to the right resources to give the best possible support to all young people.

Engagements

2. Kezia Dugdale (Lothian) (Lab): To ask the First Minister what engagements she has planned for the rest of the week. (S5F-01299)

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

Kezia Dugdale: Barra is one of Scotland's most beautiful and peaceful places. That peace has been shattered by the actions of Salman Abedi. The family of Eilidh MacLeod is grieving and the family of Laura MacIntyre is just hoping and praying that their daughter will get better. A death like that shatters most communities, but it hits particularly hard in an island community such as Barra. Will the First Minister tell us what extra support the Scottish Government can offer to the people of Barra at this difficult time?

The First Minister: Kezia Dugdale makes a very powerful point. The death of a young person—in any circumstances, but particularly in tragic and horrific ones such as those we have witnessed this week—is very difficult for any community anywhere to deal with. Barra is a small and very close-knit island community, so the impact of Eilidh's death and Laura's horrific injuries will be felt there in a way that is much more intense than would be the case in a bigger community. We must be mindful of that. My colleague Angus Brendan MacNeil is a resident of Barra, and I know from him just how that impact is being felt.

On the support that is being offered, Scottish Government officials have already engaged with the local council to ascertain what support is being made available and to consider whether there are ways in which we can support that. I understand that the director of education, who is himself an educational psychologist, is on Barra, and that a further educational psychologist and an NHS clinical psychologist are travelling there today. Between them, they will focus on the support that the families of, and those who were closest to, the two girls will need. Of course—people will understand and agree with this—their aim will be to keep things as normal as possible for the school that the girls attended, but to make sure that support is in place for the young people who are going need it.

The last point that I will make—as is often relevant in any tragic incident such as this—is that

we all think of people in such circumstances in the immediate aftermath, because the media are full of images. However, it is often in the days, weeks and months after such an event that the impact on those closest to people who have died will be felt. I am very conscious that the Government, working with the council, which will be in the lead, needs to make sure that that support will be in place—not just today, next week or next month, but for as long as it is needed.

Kezia Dugdale: I very much welcome that answer, and I thank the First Minister for it.

After attacks such as that in Manchester, political leaders talk about how we cannot let terrorists change our way of life. We can do that by carrying on with the business in this chamber and by holding the Government to account as normal, and that is what I want to do now.

Earlier this week, Target Ovarian Cancer published its pathfinder report, which is the first of its kind in Scotland. It found that 36 per cent of general practitioners wrongly believe that there are no detectable symptoms of ovarian cancer. That is costing lives. Will the First Minister tell us what steps she will take to improve the expertise on and awareness of ovarian cancer among Scotland's GPs?

The First Minister: We will pay very close attention to that report in the first instance. Obviously our focus is on prevention and early detection as much as it is on treatment and it is extremely important, particularly with cancer, to make sure that clinicians, particularly primary care clinicians, have the guidance and the information that they need to spot symptoms. I know that GPs and others working in primary care want to be in the best possible position to do that.

Work is regularly done—not simply for ovarian cancer but for other conditions—to look at and review guidance for clinicians. I give an undertaking today that we will do that as far as the ovarian cancer report is concerned because we know—this runs strongly through our detect cancer early programme—that the earlier cancer is detected, the better the outcomes for the patients who have it.

Kezia Dugdale: Thank you for that. Of course, it is not just GPs who lack awareness of the early signs of ovarian cancer. The report shows that 83 per cent of women do not know the main signs or the main symptoms of ovarian cancer.

The First Minister just mentioned the detect cancer early programme, which has been very successful at raising awareness about cancer of the breast, lung and bowel. Given the startling findings of the report and the prevalence of ovarian cancer, does the First Minister think that it is time to extend that detect cancer early

programme to cover ovarian cancer, which it currently does not?

The First Minister: We keep that programme under review. I was health secretary when the detect cancer early programme was first established and a lot of careful thought went into deciding on the particular cancers to focus on in the first period of that campaign. Lung, breast and bowel cancer were selected because of the significant number of people who suffer from those cancers in Scotland.

However, groups representing patients with other cancers regularly make representations for inclusion in that programme and we are happy to consider such representations. Given the report from Target Ovarian Cancer that has been referred to, we certainly welcome the opportunity to discuss with Target Ovarian Cancer how we as a Government can support greater efforts to raise awareness among the public at large and, in particular, among clinicians working in primary care. I would be happy to make sure that the health secretary includes in that discussion the possible future inclusion of ovarian cancer in the detect cancer early programme.

Cabinet (Meetings)

3. **Patrick Harvie (Glasgow) (Green):** To ask the First Minister when the Cabinet will next meet. (S5F-01303)

The First Minister (Nicola Sturgeon): On Tuesday.

Patrick Harvie: I add my condolences and those of my party to the family, friends and community of Eilidh MacLeod and our most sincere hopes for the recovery of the great many others who may still be fighting for their lives or who are recovering from serious injuries, including Eilidh's friend Laura MacIntyre. As the faces of those who have been lost or injured are seen and as we learn the names and something of the life stories of those who have been affected, tears will be shed in communities such as Barra across the United Kingdom and around the world, too.

Election campaigning is due to recommence later. We all have a responsibility to carry out that campaigning in an appropriate tone and, in particular, to reject the division that terrorists and the far right in this country seek to create along the lines of race and religion.

Keeping people safe at home must never prevent us from valuing all life equally. Is the First Minister aware of the tragic deaths of at least 34 people—many were children, including toddlers and even babies—when crossing the Mediterranean on Wednesday from Libya to Italy? Can I seek a continued commitment from the First Minister—and, I hope, from all political leaders—to

resist the voices of hostility and xenophobia; to ensure that we look after those who need safe routes to this country and others; and to give such people safety and security as asylum seekers here? Is this an appropriate time to press the UK Government to reverse its decision to scrap the Dubs amendment to protect child refugees?

The First Minister: I am aware of the dreadful tragedy to which Patrick Harvie referred. Anybody else who has read accounts of that event will, like me, have been distressed and upset to read of children—mainly toddlers—being drowned and killed.

It is important for all of us—I know that we all, as human beings, take this view—to understand that the loss of a child's life is a tragedy, no matter where that child comes from or what the circumstances in which they grew up were. We should mourn and grieve for any child's life.

When a child loses their life—whether it is in an attack such as the one in Manchester or in crossing the Mediterranean with their family while fleeing circumstances that we can scarcely imagine in the hope of a better life somewhere else—we should always dedicate ourselves to learning the lessons and doing everything that we can to make the world a better place for our children to grow up in.

The only person who was responsible for what happened in Manchester on Monday night was the man who did what he did and carried out the attack. However, we must all work to resolve the conflicts in the world that people like that individual try to use as an excuse—that is completely without justification, but nevertheless they try—for the heinous acts that they carry out.

There is a lot of injustice in our world right now, and we can sometimes feel helpless in the face of it, but we all have a role to play in addressing that injustice and making our world a better place. One way in which we can do that is by offering a hand of friendship to those who are fleeing conditions elsewhere that we can scarcely imagine. I am proud of the work that local authorities and other agencies across Scotland have done to welcome Syrian refugees and to make them feel at home here in Scotland.

Today is not a day to make party-political statements, but I think that the UK can and should do more in the years ahead. Honouring the Dubs amendment would be one way to give a helping hand to some of the most vulnerable children anywhere on our planet.

Patrick Harvie: I am grateful for those words. All our hearts are hurting for those whose names and faces we are learning, but it is important to remember the equal value of every life, including those of people whose faces we will probably

never see and whose life stories we will probably never learn about.

I will ask the First Minister about the UK Government's decision, which I support, to suspend the sharing of intelligence information with the United States following a series of leaks to the media of information that is particularly sensitive and potentially relevant to inquiries. It has been reported that UK officials have expressed anger, disbelief and astonishment at the actions of the US intelligence services in leaking that information.

Does the First Minister share that reaction? Does she agree with the UK Government's decision to suspend the sharing of such information? What are the implications for the security measures for which the Scottish Government and Police Scotland are responsible if, in the future, we cannot trust the intelligence services of an ally?

The First Minister: On the first part of Patrick Harvie's question, as I said earlier, every child is valued and we should mourn the death of every child. I will not be the only person in the chamber, in Scotland or in the UK who finds it difficult to look at the photograph of the wee eight-year-old girl who was killed in Manchester without feeling tearful. We will never see the photographs of many of the children who die in other circumstances, but that does not mean that their lives are any less valuable or that we do not have a responsibility, in working with others, to try to make things better for other children.

The ability of countries to share intelligence confidentially and securely is one of the things that help to keep us safe. The importance of that, and of having trusted arrangements in place such as the five eyes system, cannot be overestimated. I share the UK Government's anger and disbelief that very sensitive details from an on-going live investigation have been leaked to the media in America. That is completely unacceptable and I think that all of us should make it clear that it is unacceptable and cannot be defended in any way, shape or form.

I know that the UK Government will have taken its decision with regret, but it is right to stop sharing—for a short period, I hope—such intelligence information with the American Government. I know that the UK Government will want to do that for as short a period as possible and that the Prime Minister has said that she will raise the issue with President Trump. I very much hope that the American Government will give assurances that allow a speedy return to the sharing of intelligence, which is such an important part of keeping safe not just the population in the UK but populations around the world.

Let us be in no doubt that what we have read and seen in American newspapers over the past couple of days is completely unacceptable and potentially compromises the investigation that is under way into the atrocity that we saw in Manchester on Monday night.

The Presiding Officer (Ken Macintosh): If we keep the questions and answers relatively succinct, we will get through a number of supplementary questions.

Linda Fabiani (East Kilbride) (SNP): In this sad week, people have many concerns and, of course, safety and security are among them. Will the First Minister confirm that the chief constable has the proper resources to deal with the security situation in Scotland as it stands?

The First Minister: I have had that assurance from the chief constable. We discussed the matter in Parliament yesterday, when I made a statement on the security situation. After that statement, I visited the multi-agency co-ordination centre in Govan police station and spoke again to the chief constable there. As is his responsibility, he has reviewed the security arrangement in Scotland, given the increase in the threat level, and he has made judgments about the level of policing, including armed policing, that is necessary. His judgment at this stage, which he will keep under review, is that the police have the resources within their own resources to provide that level of policing across Scotland, so he does not require at this stage to call on military personnel to help to police the streets or public places in Scotland.

I publicly record my gratitude to the military for their offers of support and for the support that they are providing in other parts of the UK. I spoke yesterday to the brigadier who has responsibility in Scotland and I recorded my gratitude for his offers of support. However, the police here in Scotland have the resources from within Police Scotland to provide the appropriate level of security, and we should be grateful to them for that. The chief constable has the operational responsibility to make such decisions and he will keep the matter under review for as long as the heightened security situation exists.

Tavish Scott (Shetland Islands) (LD): This morning, Parliament's Culture, Tourism, Europe and External Relations Committee considered the role that Scotland's libraries, museums and galleries play in the pursuit of knowledge and understanding. Does the First Minister understand that in this post-Manchester world people of all ages keep asking why this atrocity happened? Will she undertake to co-ordinate the work of the national collections on the understanding and study of Islam and the diversity of religious tolerance and understanding and to co-ordinate

the work that goes on across all our agencies to that end?

The First Minister: I am happy to take that forward and to ask Fiona Hyslop to look at what we can do to support our national galleries, our libraries and others in contributing to the mutual understanding of different cultures and faiths, because that is so important and is at the heart of the issue today. Many conflicts and disputes around the world come from ignorance and misunderstanding—it has to be said that some of that is deliberate misunderstanding and ignorance. The more we encourage people to learn and understand about different faiths and cultures, the more chance we will have of ensuring that people not just in this country but around the world can live together in harmony. Culture, books and art have a hugely important role to play in that, so Tavish Scott's suggestion is good and I am happy to ask Fiona Hyslop to take it forward and report back to him in due course.

Bob Doris (Glasgow Maryhill and Springburn) (SNP): I met the head of the student association at Glasgow Kelvin College in Springburn recently and I understand that, following strike action, colleges' terms might need to be extended to allow students to achieve course credits. Will the Scottish Government work with colleges to ensure that they are in a position to alleviate any additional student hardship that is caused by that extension, such as hardship from additional childcare or travel costs?

The First Minister: Shirley-Anne Somerville met Colleges Scotland's employers association on Tuesday this week to seek reassurance on the contingencies that colleges have in place to minimise any impact on students as a consequence of the recent strike action. A firm assurance was given that contingency measures are in place. However, I am happy to ask her to speak to Colleges Scotland to raise those specific issues. More generally, I am pleased that agreement was reached last Friday between the unions and the employers to enable further strike action to be called off.

Foreign Direct Investment

4. **Kate Forbes (Skye, Lochaber and Badenoch) (SNP):** To ask the First Minister what action the Scottish Government is taking to attract foreign direct investment. (S5F-01316)

The First Minister (Nicola Sturgeon): The 2017 Ernst & Young attractiveness survey on inward investment to the United Kingdom, which was published on Tuesday of this week, reported that, with 122 projects being successfully secured during 2016 and three Scottish cities—Glasgow, Edinburgh and Aberdeen—being in the top 10, Scotland has continued to be the most attractive

location for foreign direct investment outside London in every one of the past five years.

We continue to work with Scottish Development International to engage with potential investors across the globe to ensure that they are fully aware of the many strengths of the Scottish economy and the range of support that is available to help them to grow their businesses here.

Kate Forbes: I agree that the EY Scotland attractiveness survey is a very positive sign for the Scottish economy. Does the First Minister agree that a further positive sign is the number of high-value projects, particularly research and development projects, that Scotland now attracts and that, although they may not bring as many jobs in their first phase, they are the basis for a high-value, knowledge-based economy that will lead to more and better-paid jobs in the future?

The First Minister: Yes, I agree very much with that. The attraction of high-value jobs to Scotland is a very positive sign. The EY survey says:

"Scotland was the clear leader for R&D ... in the UK, attracting more projects than any other UK region in 2016".

R and D projects attract high-skilled, high-value jobs, and our excellent performance in the face of what we see as reductions in R and D investment elsewhere is testament to the strength, among other things, of our academic excellence.

However, we must not be complacent, and we remain very focused on ensuring that Scotland continues to be seen as a highly attractive place to invest.

Jackie Baillie (Dumbarton) (Lab): Although growth in foreign direct investment is absolutely to be welcomed, the increase was 2.5 per cent last year compared with 51 per cent in the previous year. Our growth was less than that of the UK as a whole and the total number of jobs secured fell by almost 50 per cent. The EY survey also says that Scotland's perceived attractiveness to investors has decreased for a number of reasons, which I will not rehearse. Can the First Minister offer an explanation as to why there is that difference in FDI growth and say what action she is taking to close the gap?

The First Minister: I think that it is very difficult for anybody to read the EY report from Tuesday fairly and come to the conclusion that it is anything other than positive for Scotland. If we look at the comparisons with last year, we see that in 2015, which is the year that the previous report was based on, we recorded our highest percentage share of UK projects of the past 10 years. It was a particularly strong year, so the improvement this year on last year was always likely to be slightly less than that.

However, the 2016 result is still excellent. The fact that 10.7 per cent of all projects came to Scotland still places Scotland significantly above our population share in what is an extremely competitive inward investment environment. We should not be complacent about that, but we should all absolutely celebrate it.

The point about jobs goes back to the question that Kate Forbes just asked me—Kate Forbes absolutely put her finger on this. A number of the projects that are reported through the EY study did not have figures for jobs. That obviously reduces the number, because we do not know how many jobs there are for some of the projects.

One of the other issues with numbers of jobs is that so many of the projects that we attracted last year were high-value projects, particularly in R and D, and, as most people know from their own experience, those kinds of projects do not necessarily bring the large numbers of jobs that others do, but they do bring huge value to the Scottish economy.

The future success of our economy is based on attracting high-skilled roles in areas such as R and D and software, which deliver that higher value. Actually, we should see the success of R and D not as a negative, because it perhaps brings fewer jobs, but as a positive, because of the value that it adds to our economy over the longer term.

Mike Rumbles (North East Scotland) (LD): Foreign direct investment is absolutely essential to Scotland, but before the Scottish Government invests any money in companies that are based abroad, will it carry out checks to ensure two things: that those companies pay their proper taxes; and, as important, that they have a level of pay for their workforce that is legal and appropriate?

The First Minister: Scottish Enterprise carries out robust due diligence on companies before it invests. It carefully assesses the companies that it invests in, not least so that we can ensure that we get the greatest value for taxpayers' money.

On the two particular points that Mike Rumbles raises, the Scottish Government's position could not be clearer. It is absolutely the responsibility of all companies to pay the tax that they are due to pay. Responsibility for this is not for the Scottish Government, as it is not within our powers, but I believe that there should be in place much more robust rules and regulations on tax avoidance by companies.

We are absolutely crystal clear about the importance that we attach to payment of the living wage. We are now in a situation in which a higher percentage of people are paid the real living wage in Scotland than in any other nation in the United Kingdom, but we still have work to do, so we will

continue to use all the levers at our disposal to ensure that we encourage companies to pay the living wage or set out plans by which they can move towards paying the living wage.

Business Leaders (Meetings)

5. **Adam Tomkins (Glasgow) (Con):** To ask the First Minister whether the Scottish Government will provide details of the meeting it held with business leaders on 21 March 2017. (S5F-01304)

The First Minister (Nicola Sturgeon): Ministers regularly engage with the business community and proactively publish details of those meetings on the Scottish Government website. On 21 March, I, with the Deputy First Minister, the economy secretary and the finance secretary, met 12 key business leaders at Bute house, to continue our engagement with industry on Scottish Government activities, and to allow them the opportunity to raise any issues with us in return.

Adam Tomkins: I am very pleased that the Scottish Government spends a proportion of its time speaking with business leaders. We can all learn from Scotland's businesses, large and small, about how we can grow and stimulate the Scottish economy.

Given that young people are, rightly and understandably, a theme of today's First Minister's question time, let me ask this: what advice have Scotland's business leaders given the First Minister on how Scotland's economy can be stimulated for our young people who are entering the jobs market for the first time, and how is the Scottish Government acting on that advice?

The First Minister: There are a range of ways in which we are working to ensure that our economy offers the opportunities that our young people need and want. The work that many of our universities and colleges do with business to ensure that they are providing the courses and opportunities that employers need to grow their businesses is part of that, and the work that we are doing to encourage high-value investment into Scotland is another part.

One of the business leaders who were engaged in discussion with us on 21 March was Sir Ian Wood, who led for the Scottish Government the work on developing the young workforce, to make much more close and productive links between our schools, our academic institutions and the world of work. The work on developing the young workforce is now being taken forward across Scotland, and chambers of commerce, for example, have a leading role to play in that.

Although our economic strategy and economic initiatives have a range of purposes in growing the

economy, they should all be furthering our young people's opportunities to succeed and prosper.

National Health Service Pay Cap

6. Anas Sarwar (Glasgow) (Lab): To ask the First Minister, in light of her expressing the view that the NHS pay cap is "unsustainable", whether the Scottish Government will provide details of the submission it made to the pay review body. (S5F-01306)

The First Minister (Nicola Sturgeon): In the most recent pay review, the Scottish Government submission included a commitment to paying the real living wage, a guarantee of a minimum increase of £400 for staff earning £22,000 or less, the continuation of our policy of no compulsory redundancies—all three of those policies are different from those elsewhere in the UK—and a 1 per cent pay increase for staff earning more than £22,000, which is similar to the position in Wales.

That was our most recent submission. I have made it clear that, as we have now entered a period in which inflation is rising, the pay restraint that we have seen in recent times is unsustainable. That is why, in advance of our next submission, we have asked staff representatives, including unions, to gather evidence to submit to the pay review body.

Anas Sarwar: The First Minister will be aware that our NHS staff have endured seven years of pay restraint, which for some nurses has meant a 14 per cent real-terms cut worth £3,400. As the First Minister has just said, her submission to the pay review body was to keep the 1 per cent pay cap. Does she accept that our fantastic NHS staff deserve better pay, and will she commit to scrapping the pay cap?

The First Minister: As I said, we have had pay restraint for the last number of years, and I know how difficult that has been for staff. Of course, the purpose of that has been to protect jobs in our NHS and our wider public service at a time when our budgets have been getting reduced year on year. The Scottish Government has taken a range of actions to try to give targeted support, particularly to the lowest paid. The initiatives that I outlined—the real living wage, the guaranteed increase for low-paid staff and the continuation of the no compulsory redundancies policy—are all policies that are not in place elsewhere in the United Kingdom. That is an indication of how seriously we take fair treatment of those who work in our NHS.

On the future, I have made it clear that, when inflation is rising, pay restraint of that nature cannot be sustainable. For the NHS, we have given a commitment to making a submission, with staff representatives, that takes account of

inflation and through which, moving forward, we can secure fair outcomes for staff in the NHS and the wider public service that take account of affordability but also the cost of living and the pressures that people live with daily.

Celtic's European Cup Win (50th Anniversary)

The Deputy Presiding Officer (Linda Fabiani): The next item of business is a members' business debate on motion S5M-05239, in the name of James Dornan, on when the Lisbon Lions roared, 50th anniversary of Celtic's European cup win.

I call James Dornan to open the debate. You have around seven minutes, please, Mr Dornan.

Motion debated,

That the Parliament congratulates Celtic FC on the 50th anniversary of its historic win over Inter Milan in the European Cup final on 25 May 1967; considers that this was a magnificent achievement for a football club with all of its players living within a 30-mile radius of its home ground, Parkhead; notes that it was the first British team to win this trophy, and believes that, for Scottish and British football, the Lisbon Lions set a standard that is unlikely to be matched by a solely home-grown club again.

12:43

James Dornan (Glasgow Cathcart) (SNP): Thank you, Presiding Officer. I know that, when you have a lot of members wishing to speak, you often ask for a motion to be moved to extend the debate, but I was wondering whether I could get an extra 30 minutes for this speech, because there are a number of things that I would like to say and I have had a problem curtailing it.

1967. What a time to be 14! The Beatles, Motown, girls and Celtic. I will never forget Thursday 25 May 1967, when my dad, my brother Brian, my Mum and I all crouched round our wee black-and-white television at 5.30 pm. Kick off comes and goes, and nine minutes into the game the referee works his hardest to ensure that we will not be smiling at the end—it is a conspiracy—by giving a penalty against my dentist. I still say that it was a ludicrous decision. Batter, batter, batter! Yet, nothing gives. Then, in the 63rd minute, justice begins to be served. My dentist attacks from the right-back position, knocks it over to Danny Kaye, and it is one each.

It sounds like an old movie, does it not? After that, it was just a matter of time until, charging up from the left-back position comes Danny Kaye, who slips the ball to Bobby Murdoch—the greatest midfielder of all time—whose shot is stuck into the back of the net by Stevie Chalmers. There is utter mayhem in Lisbon on the pitch, in the stadium, in most houses in Scotland and, I suspect, in houses of football supporters around the world—especially in my house, of course.

I remember a number of things about the match, outside of the goals and the performance. When that second goal went in, I got soaked as my dad's

tea went flying all over the place as we all tried to reach for the ceiling at the same time. My other brother, Michael, came in from the room where he was doing his homework, asking what all the noise was about. I know, I know: we despaired, too.

"Top of the Pops" followed right after the game. I remember that because, hey, I was 14 at the time. Another thing that I remember is the fact that I had the opportunity to go to the game with my uncle, but I never got to go, for two reasons. One reason was financial difficulties—it was not uncommon back then not to be able to afford to do those sorts of things. The other reason was that I had been grounded. So remember, kids: if you are lucky enough to support a great team, make sure that you behave. Otherwise, who knows what the consequences could be?

By the way, for the benefit of younger folk—which, looking around the chamber, I think is everybody here—"my dentist" was Jim Craig, and "Danny Kaye", who was an American film star of the time, was Tommy Gemmill.

That result was larger than me, my family, Celtic or even Scottish football. It changed things. It changed the way people thought that the game should be played. For years, "cattenacio"—score, then defend at all costs—had been the way, and it had been hugely successful. Inter Milan had won the European cup twice and were expected to win it for a third time in four years, especially when they went 1-0 up, but they could not live with the whirlwind that was Celtic—42 attempts at goal to Inter's five, and 10 corners to Inter's nil.

After that game, teams realised that they could win by playing the Celtic way, so we started to see teams such as the great Dutch teams Ajax and Feyenoord take up the mantle. However, Celtic were not done. In the subsequent years, they had one quarter final, two semi-finals and one final of the European cup. Unfortunately, they lost that final to one of those up-and-coming teams—Feyenoord.

Celtic were one of the great European teams. That year—1967—changed how Scottish football thought of itself. Ludicrous as it might sound now, Scotland could have made a claim to being the best footballing nation in the world in 1967. Kilmarnock reached the semi-finals of the fair cities cup, Rangers reached the final of the European cup winners cup and Scotland won the unofficial world cup by hammering England 3-2 at Wembley with a quite scintillating display.

Outside of football, it was fitting, too. Celtic played stylish football at a time when modern life was changing and when young people started to see themselves as more than appendages to their parents and to become more adventurous in how they lived their lives. In Glasgow, to be young was

exciting. Music had Motown, the Beatles, Hendrix and the Doors, and there was the continuing expansion of modern culture. For us, Celtic's victory fitted in well.

However, I think that the place where it might have made the most difference was in the working class areas of the west of Scotland, particularly among the Irish communities. It made us feel a real sense of pride in our achievement—and we did think that it was our achievement. A team full of working class lads, all born within 30 miles of Glasgow city centre—I say to George Adam, wherever he is, that that is the real centre of the universe. The city came together and we celebrated as one. We Celtic fans cheered Rangers on against Bayern Munich the following week, and shared in their disappointment when they lost 1-0.

Outside of football, in modern culture, 1967 was the most exciting of years in many ways. The first heart transplant was done that year by Christiaan Barnard. I have talked about the Beatles a number of times, but I will just say that "Sergeant Pepper's Lonely Hearts Club Band" was released that year, along with "Penny Lane" and "Strawberry Fields Forever", the best double A-side of all time. The first North Sea gas was pumped through the pipeline. Of course, there were downsides: Muhammad Ali getting five years for refusing to be inducted into the US Army, Otis Redding dying, and Peter and Gordon—Google it—splitting up.

I was extremely lucky to come across a number of the Lisbon Lions in later years. As I said earlier, Jim Craig was my dentist for a short time in Mount Florida. Billy McNeil and John Clark were my son's management team when he was at Parkhead. I spent a few nights chatting to the wonderful Bobby Murdoch when he had a pub in Rutherglen. I sang and cracked jokes with Jinky and Buzzbomb Lennox at a few Celtic do's. The great thing was that they were all gentlemen—all down to earth and happy to chat. It is hard to imagine the same scenario with the modern-day superstars—remember, Jinky was the Messi of his day.

It would be terribly remiss of me not to mention the other four Lions: John Fallon, the first substitute in a European final; Charlie Gallagher, a wonderfully gifted player who crossed for Big Billy to score the winner against Vojvodina in the quarter final; John Hughes, the unluckiest player, who missed out, and a player who could beat a team on his own; and, of course, Joe McBride, who finished that year as Scotland's top scorer, despite being out injured from the new year.

For parliamentary posterity, let me just remind everyone again of that team: Simpson, Craig, Gemmell, Murdoch, McNeill, Clark, Johnstone, Wallace, Chalmers, Lennox and Auld.

As I have mentioned before, I was 14 in that glorious year. During the summer I made a friend on holiday and, like with most holiday friendships, we lost contact, but recently made contact again through social media. When I said that I was having this debate, she sent me this poem by her father, John Mulligan. I want to read out the last verse of it. It highlights perfectly what that great day meant to so many people and how it is a day that we will never forget.

This is about when the winning goal goes in.

"Through tears of joy, I see it yet,
Lying so peacefully in the net.
The watches are out, just minutes to go,
Boy oh Bhoy has this been a show!
Came the final whistle, the final scene.
(Get that sideboard ready, Mr Stein).
The sun sinks slowly in the west
And weary bodies lie down to rest.
And if that night some men are smiling in their dreams
They are living again the Lisbon scenes.
And going over this great, great day,
1967, Thursday the 25th of May."

Hail, hail!

12:51

Graham Simpson (Central Scotland) (Con):

First, I apologise for the non-appearance of my colleagues Murdo Fraser and Adam Tomkins, who were desperate to take part in the debate but were somehow unavailable.

As a west of Scotland politician, I have always steered clear of mentioning football allegiances, but my wife tells me that it is time to come out. My dad, his dad and his dad's dad before him were born and brought up in the shadow of Parkhead in Glasgow's east end. My dad supported Celtic because it was his local team, and he used to tell me about the club's charitable origins, which always impressed me as a youngster.

I was only three when Celtic won the European cup, and I guess that my father was pretty excited, although I do not remember it. I spent many years under the impression that we were somehow related to the late Ronnie Simpson. My dad told me that we were, but, despite extensive research, I have never been able to establish the connection. If there is anybody out there who knows better, please get in touch.

The Lisbon Lions played a swashbuckling style of football that was entertaining and full of flair—that is how football should be played. That they were all young men from within a few miles of Glasgow was remarkable. As the motion suggests, we will never see such a feat again. Last year's winners, Real Madrid, had only two Spaniards in their starting XI. That Celtic made it to a second European cup final—they were unsuccessful the second time—was also incredible.

The first Celtic game that my dad took me to was the last for the Lisbon Lions captain, Billy McNeill—the 1975 Scottish cup final against Airdrieonians. Fittingly, Celtic won 3-1 in front of a 75,000 crowd, and Caesar lifted the cup.

We used to travel up from Carlisle for the odd game, and it was all a big adventure. When I eventually moved to Glasgow for work, I followed the team through thick and thin, including the “Super Caley Go Ballistic” game, which was a particular low point. I was lucky enough to be at the UEFA cup final in Seville in 2003.

My work had a team, which played in a charity match against Chick Young’s Dukla Pumpherston, and I lined up against one of my football heroes, Danny McGrain. He never played in a tougher game. Then Gerry Collins body-checked me off the park.

My dad met my wife for the first time on the Parkhead terraces during a less successful period, when it was quite easy to find someone on the terraces. Quite why she married me after that is anybody’s guess—especially when I decided to become a season ticket holder.

Football has changed greatly since 1967. It has become big money and international. That is not something to be sad about, however. Celtic fans have been lucky to see the likes of Henrik, Lubo, Di Canio and Pierre, and Rangers have had Laudrup, Albertz, Gazza and Filip Šebo, although some of their greatest stars were home grown—Baxter, McCoist, Durrant and Barry Ferguson.

Whoever one supports, seeing local talent come through the ranks is great, but we will not see another team of Scots make it to the heady heights that Jock Stein’s men achieved in Lisbon that day. For Scotland to have produced the first British team to win Europe’s premier trophy is something that all of us should celebrate, whoever we support—and that includes Murdo Fraser and Adam Tomkins.

12:55

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): I congratulate my friend and colleague James Dornan on bringing this important debate to the Scottish Parliament to commemorate the 50th anniversary—today—of a wonderful achievement by Celtic Football Club when it won the European cup in Lisbon in 1967.

I am naturally appreciative that James Dornan also mentioned my own team, Kilmarnock, and its achievement that same year. Fifty years ago yesterday, we played in the semi-final of the fairs cup—which then became the UEFA cup and is now the Europa league—losing out narrowly to a wonderful Leeds United team. I attended that

game as a young boy, just as I attended all the European matches that came to Rugby park.

The Celtic achievement in 1967 was pretty incredible when we consider that they finished eighth in the league a couple of seasons earlier, when Kilmarnock were champions. The key, of course, was the arrival of Jock Stein as manager in 1965. To go from eighth in the Scottish league to winning the European cup two years later, and then nine championships in a row, is an unbelievable achievement and marks Jock Stein out as one of the all-time great football managers in the world.

Apparently, Jock had managed to get Bertie Auld and Ronnie Simpson to Celtic even before he officially became the manager of the club. He went on to assemble a talented group of players, most of whom lived near the ground—Bobby Lennox was furthest away, in Saltcoats. In fact, one street in Saltcoats can boast nine Scottish cup winners’ medals. Kilmarnock’s Ray Montgomerie has one and Bobby Lennox has the other eight, on top of his European cup medal and other medals, but that is a different story.

The journey to the final of the European cup in those days was a straight home-and-away aggregate knockout—there were no leagues, as there are today—and it was only champions who got into the competition.

I am indebted to Mr Albert Gonnella, an old friend and colleague, who sadly passed away only last year. Some years ago, he very kindly let me copy the match programme for the final that he brought back from the game, on which are the autographs of both the managers and most of the players. He managed to get them on the way back home from the airport, so it was signed by big Jock and Herrera, along with the whole Celtic team, including Charlie Gallagher, as well as Mazzola, Sarti and most of the Inter team. It is quite a privilege to have it.

The programme shows us that Celtic beat four teams on the way to the final—FC Zurich, FC Nantes and Vojvodina, and then Dukla Prague in the semi-final. It is interesting that Linfield from Northern Ireland also made it to the quarter finals that year, losing out to CSKA Sofia.

The final, which was on a Thursday, just like today, kicked off at about 5.30 pm. I remember watching it on the TV at home, in black and white—it seemed a pretty hot day there.

One of the funniest stories that I have read about the game is Billy McNeill’s description of both teams in the tunnel before the game: Inter were all tall, athletic and tanned, and Celtic were all peellie-wally white—some of the team with no teeth. Bertie Auld then started singing the Celtic

song, which must have been a huge motivation for the players before they came out on to the park.

No sooner had the game started than Inter were awarded a slightly dodgy penalty to go up 1-0, but as the game developed, it looked to me as if Celtic could have been three or four up in the first half. As a young boy used to seeing my own team winning regularly in those days, it became clearer as the game wore on that Celtic were miles ahead in both skill and stamina. When the equaliser went in in the second half, there was only one outcome, and the winner duly arrived with about five minutes to go.

The Scottish team who had no chance against the fabulous Inter Milan played them off the park, and by the end it was the Inter players who were looking to get hold of Celtic strips for souvenirs.

The great Bill Shankly summed it up when after the game he told Jock Stein that he was now immortal.

It was indeed

"In the heat of Lisbon
The fans came in their thousands
To see the Bhoys become
Champions
67."

I once again thank James Dornan for bringing this debate to the Scottish Parliament and for allowing some of us to share our memories and to offer our congratulations to Celtic on a magnificent achievement.

13:00

James Kelly (Glasgow) (Lab): I congratulate James Dornan and thank him for lodging the motion, securing the debate in Parliament and allowing so many members to share their memories of such an important occasion.

It seems to be one of those debates in which people reveal their ages. I was three and a half at the time of the 1967 cup final; it is my earliest memory in life, and I remember so well the excitement in the house and the game coming on the television. I would not say that I understood football a great deal at the time, but I realised the importance of the occasion and remember the excitement when Celtic won.

A lot of families had their own representatives in Lisbon, and mine was no different. Our representative was my grandfather James Kelly, who I am named after and who got there courtesy of winning a newspaper competition. That was quite good, because he did not even know that he had entered it—my dad had done it. Those who entered had to name all the teams that Celtic played on the way to the final and then come up with a caption; my dad's caption was "Clean

sweep soots the Celts"—and certainly as far as my grandfather was concerned, a clean sweep really did suit them. He thoroughly enjoyed his time in Lisbon, not just, as I understand it, the football but the celebrations after the game.

Fast forward to April 1980: I had saved up for one of those projection kits that were advertised in *Shoot!* magazine and which were used to show football films. When it arrived, all of us—my brothers Jack, Frank, Tony and Gerard and my friends Gerry Foyer, David Gibbons and Paul Wilson—crowded into my house in Halfway. This was in the days before YouTube, so we had not really seen any footage of the game, apart, perhaps, from the goals; when we ran the 10-minute silent black-and-white film, we could not believe how good Celtic were. We watched for the first time the famous Ronnie Simpson back-heel as he took out an Inter Milan defender; we watched Jimmy Johnstone run rings round the defence; and we watched Tommy Gemmell's ferocious shots.

These were also the days before people compiled statistics of games. Since then, though, the statistics of that game have been compiled, and they show that Celtic had 45 shots on target while Inter had only three and that Celtic had 10 corner kicks while Inter had none. It must be the only time in the history of European cup finals that a team has not had a corner, and it only shows Celtic's dominance. We could not believe the absolute quality of Celtic and how good they were—even in a fuzzy, black-and-white film.

The other day, someone challenged me to say why the Scottish Parliament should be debating a game of football that was played 50 years ago. There are two reasons. As James Dornan has said, this was a victory for the working-class community. It also showed that 11 players who lived within a 35-mile radius of Celtic Park were able to take on the best in Europe and win, and my family, like a lot of working-class families in Glasgow and west central Scotland, took great pride in that victory. Indeed, they still do, and it is something that is still shared with families.

This was a fantastic achievement by the Lisbon Lions, and it is a great piece of history that is still very relevant to many families. I also think it relevant that James Dornan has been able to secure the debate and allow us to celebrate that tradition.

13:04

Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP): I congratulate James Dornan on securing this debate. I have no doubt that some members are wondering what on earth Christine Grahame is

doing in a debate about football. As members might know, sport—whether it is participating in it or watching it—is not in my DNA, and I know little about it. I am not proud of that; it is just a fact. It is a bit overwhelming to be among so many experts on football.

However, let me take members back to 25 May 1967, when—and here is another declaration of age—a young secondary teacher, me, had a date that evening with her later-to-be husband. He was a keen sportsman—football, rugby, golf and so on. They say that opposites attract. The place for the date was the top of Dunfermline High Street, and I cannot recall the exact time, but it will become relevant.

My Dunfermline landlady, Mrs Irwin, had settled down to watch the Celtic match, so I joined her on her big sofa, just to pass the time until my evening romantic rendezvous. Soon, despite myself, I was engrossed in a match between a team that I saw as fighting Scots, as Davids against the Goliath of Inter Milan. I recall my heart sinking when that first penalty goal was scored against Celtic but, instead of leaving in despair, I found myself immersed as, time and again, Celtic tried to break down a solid wall of Italian defence. I had no idea that it was a match of—let us say—an attacking as opposed to a defensive style. Then, at long last, came the equaliser, and I was going nowhere, date or no date.

I recall the players' struggle against fatigue, socks rolled down as they played with every sinew of muscle and determination. When that winning goal was scored, I held my breath until the final whistle. The players might have been exhausted; so was I.

Of course, I turned up late for the date. I was just about to pack it in when my boyfriend came round the corner. He, too, had been determined to see the end of the match.

Members can see how the significance of that match cannot be exaggerated. It is a match that a non-football fan like me can recall to this day. Part of the explanation for why I was so drawn to the contest, beyond the David and Goliath reference, was that, as members said, this was a team that had been forged from local players from very ordinary backgrounds, which had at its helm a man of the stature, the worldliness, the determination and the dignity of Jock Stein. Now that football has become so commercialised and is a business that pays millions of pounds for top players from all parts of the world, with managers on a treadmill of hirings and firings, I frankly cannot see that day being repeated.

The phrase "team spirit" has been overworked, but not when it is applied to the Lisbon Lions,

because it was team spirit that carried them over the goal line that day.

13:08

Annie Wells (Glasgow) (Con): I thank James Dornan for lodging the motion in celebration of a fantastic achievement that today still stands tall in the history of Celtic and Glasgow. Although I am not old enough to remember the game—I am really not—I feel like I kicked every ball on the journey, because my dad would always tell me stories about it. The fact that a team of 11 Scottish players, all born in Glasgow and the west of Scotland, were able to overcome the might of Inter Milan and that team's infamous defensive football is a story worth retelling.

Jimmy Johnstone, Bertie Auld and Bobby Murdoch were the players that my dad would always talk about as I grew up, but when the time came for his heroes in Lisbon it was not those players who wrote their names into the history books. Celtic had already enjoyed a huge amount of domestic success that season, as they often would do for the remainder of Jock Stein's tenure, while Inter Milan had fallen short in their own league, but the odds were still stacked against Celtic—a team of 11 boys from within 40 miles of each other, facing the might of the Italian giants.

Step forward Tommy Gemmell and Stevie Chalmers. I want to tell members a wee thing about Stevie Chalmers. My dad and his brother were orphaned very young, and Stevie Chalmers and his girlfriend used to come and get my dad and my Uncle Frankie and make sure that they got to the Celtic game, when he could. I thank him for that. My dad always spoke very kindly of him.

From one-nil down, Celtic scored twice to provide a fairytale ending in Lisbon. It was a Scottish club—a Glasgow club—that had made history. The fact that we are discussing it in the Scottish Parliament 50 years later is a testament to how significant an achievement it was.

Celtic, heroes of Lisbon, flew into Glasgow that night to find themselves the underdog heroes of the football world. Fans were wearing sombreros and wielding champagne bottles in delight. On the players' return from their European success, the team bus was mobbed by thousands of jubilant Celtic fans all the way from the centre of Glasgow. My dad was at Parkhead that day and always said that he remembered it as if it was only yesterday. He told me that being at Celtic Park that day made up for not being in Lisbon for the game. The streets were lined with thousands upon thousands of fans, delirious and weeping openly, as they welcomed home the men who changed the face of football. At Parkhead, my dad and his friends were

put on the back of a lorry and followed the procession route four times.

Winning the European cup was the making of the club; after that, everyone knew about Celtic. Never again have we seen scenes outside a football stadium like my dad did. The east end of Glasgow was brought together—people of all ages and classes—and given something to be proud of. Thousands and thousands of Glaswegians came together to appreciate their local heroes who had overcome all the odds to be crowned the ultimate champions of Europe and put Glasgow's name firmly in the history books.

In the financial climate of modern football today, European success feels a long way away for any Scottish club. However, that aspect of communities coming together stands strong. We have debated in the chamber the antisocial behaviour in modern-day football, and we still too often see that side of the story. Perhaps we can look at the past and see the legacy of Lisbon and how it brought so many people together.

The legacy stands strong every second Saturday at Celtic Park. We should remember that fact when we talk about football fans today, for it is the younger generations of people like my dad who are dreaming of that success for their heroes.

The Deputy Presiding Officer: I have three members left who wish to speak, so I am minded to accept a motion without notice under rule 8.14.3 to extend the debate by up to 30 minutes to allow them all to take part.

Motion moved,

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

Motion agreed to.

13:12

George Adam (Paisley) (SNP): I thank James Dornan for bringing this debate to the chamber to congratulate Celtic. Mr Tomkins has arrived, after everything. To sit here and still talk about Celtic's success 50 years later—all that I can say is, "Football fans, what are we like?"

Some people might find it strange that I am taking part in the debate, as I am not a Celtic fan and I am not from Glasgow. I am, of course, a proud Paisley buddie and support our local team St Mirren, but I, too, have a 1967 Celtic European cup story, which is surprising given that I was not born until 1969.

My mother and father were married in 1967 and, bizarrely, they thought that it would be a great idea to take their wee Triumph Vitesse and drive all the way from the centre of the universe in Paisley to Portugal. With the motor industry in the UK being

the way that it was, we can understand how that could probably be quite a difficult job for them. Their holidays until that point had consisted of just trips to Blackpool. Even their very romantic honeymoon that year had been in the granite city of Aberdeen; to her death, my mother still said that she had never even seen the northern lights—I have no idea what she was talking about in that scenario.

Members will be aware just how much of an undertaking that journey was for my parents. They left with their friends Tam and Sheena McKee, who had been married at a similar time. They drove through England, France and Spain and finally made it to Portugal, only to get lost in the middle of Lisbon. They ended up watching the game on a terrible black-and-white television in some cafe at the edge of town, but they still talked about the fact that they got the opportunity to be there and to see the match there.

As James Dornan and Willie Coffey have said, what a year for Scottish football 1967 was. Not only did Celtic become champions of Europe, but their rivals Rangers made it to the final of the European cup-winners cup. Kilmarnock reached the semi-final of what was then the fairs cities' cup—the fairs cup—which eventually became the UEFA cup; I think that that tournament was changed in every year of its existence back then.

It was quite a year for Scottish football. We even had the audacity to go down to England on 15 April and absolutely hammer them 3-2. England were then the champions of the world, so Scotland were literally at the pinnacle of football in 1967. It was not such a great year for my team, St Mirren, as they were relegated from the old first division and ended up in the second division. However, as in all football stories, there is a happy ending, because they came straight back up into the top flight in the next season.

When we talk about Scottish football in 1967, we cannot help but mention the great Jock Stein, who was born John Stein on 5 October 1922 in Burnbank, Lanarkshire. He was part of a dynamic group of Scottish managers: Matt Busby, Bill Shankly and—we always speak about the three of them—big Jock himself. Jock Stein played for Celtic and Albion Rovers as a centre half and took up management as the result of an injury. Who can forget the time when he moved on to Scotland and, after the 1978 world cup, got us into the 1982 world cup finals? Who can forget that night in Ninian Park in Cardiff when he died before the end of the world cup qualifier, not knowing that Davie Cooper had scored the goal that got Scotland through to the next round?

Jock Stein was a man who lived and loved football and wanted to play it in the correct

manner. The Lisbon Lions were a pure example of that. Jock Stein put it better himself. He said:

“I think it is important to win a match, but I think what is even more important is the manner in which you win.”

That is what our national sport should be about.

I close with the words of an esteemed sports writer, Hugh McIlvanney, who said that Jock Stein was

“The greatest manager in the history of the game. You tell me a manager anywhere in the world who did something comparable, winning the European Cup with a Glasgow District XI.”

The team will be remembered by us all and, to paraphrase the late, great Bill Shankly, they will be forever immortal.

13:17

Pauline McNeill (Glasgow) (Lab): I thank James Dornan, as it is a pleasure to hear the speeches and experiences in today’s debate, and to give my own.

By now, there is hardly a person who does not know about the historic and incredible victory in Lisbon 50 years ago. The players were 11 working class men of home-grown talent and they were the best footballers of their generation or probably even of this one. Celebrated by Scots and internationally, it was the nation’s victory and it will never be repeated.

Like many Glasgow Catholic Celtic-supporting families, we were brought up on a diet of Celtic victories and defeats. For years, we thought that we must be related to Billy McNeill, because of the number of times that he was mentioned at home. Like George Adam, the immortal Jock Stein was a household name to us, a god, a genius manager and—importantly—a bridge over the sectarian divide.

We used to wait with bated breath for the latest letter back from Celtic Park. My dad was a prolific letter writer and he had a campaign. Celtic was his first or second love, but Frank Sinatra was another of his great loves, and he used to write to Celtic Park every week to say that he would rather that they played the Sinatra version of “You’ll Never Walk Alone”. However, to my knowledge, that never happened.

It is not just a story of a football team that, as the underdogs, took on the champions Inter Milan and brought with them the wide Celtic support that had never before been experienced by the world. It is a tale of a football club that was formed to save the lives of poor Irish people who were fleeing from famine and persecution for their faith, and who wanted to be accepted on equal terms.

I have quite a few quotes from Kevin McKenna and I give him credit as he has written some excellent articles on the subject. Of the many documentaries that were on last night, I caught one that gave an account by Bobby Lennox. He said that, the night before the match, Jock Stein had decided to take the players to the prestigious house of a contact that he had in Portugal. They could not work out how to get in the front door of the large house so they were all creeping over the walls to get in. Bobby Lennox said that it would be inconceivable now for footballers to be climbing over walls the night before a European final. There could have been all sorts of disasters.

The Inter Milan players were allowed to look on at a pre-match Celtic training session. They said in amazement that it was incredible how relaxed the Celtic team was in “a kick-around”, as they described it. I think that that was all down to the way in which Jock Stein managed the team.

Jinky Johnstone was, by all accounts, the greatest Celtic player of all time. We thought that he was a superstar, and we were amazed that my dad was pictured with him. I still have that picture on my desk. Kevin McKenna wrote:

“Premature death and health inequality have stalked”

those communities, and

“The traditional afflictions ... have not spared the men who became their champions.”

He said that the players won 22 trophies from 1965 to 1975, and

“They were feared and saluted throughout Europe, yet they were ill-rewarded for their labours. Celtic raked in untold riches on the back of their endeavours but the players saw very little of it.”

Jim Craig, whose pass set up Tommy Gemmell’s goal, said:

“there was no question of our players receiving life-changing amounts of money”.

As we have heard, those men were part of their communities. They saw their supporters every single day, and perhaps were better men for that.

It is worth noting that many think that the Rangers team of that era would also have been a match for other European teams.

Kevin McKenna wrote that the historian Tom Devine:

“says the cultural and social impact of Celtic’s Lisbon triumph can never be underestimated and that it still resonates to this day. ‘That team and their achievements gave such a boost to working men all over Scotland but especially to the Irish-Catholic community in west central Scotland, whose story ... had been characterised by discrimination ... though this was beginning to fade.’”

What a team it was. A year later, in 1968, Celtic’s reputation was further embellished when,

having been drawn to play in Hungary in a European cup tie, the club protested at the Soviet invasion of Czechoslovakia by refusing to play.

Chalmers's winning goal six minutes from the end of the final will never be forgotten. A leading Swiss journalist said of the team that we must all now play football that way—the Celtic way—with eight forwards.

The rest is history.

The Deputy Presiding Officer: If you could have proved that you are related to Billy McNeill, I would have let you talk for longer.

13:22

Gail Ross (Caithness, Sutherland and Ross) (SNP): I am delighted to have the opportunity to speak in the debate, and I thank James Dornan for bringing it to the chamber.

On 25 May 1967, Glasgow Celtic Football Club was the first British and first non-Latin team to win the European cup. It did so with a team all of whom were born within 30 miles of Celtic Park; indeed, all but one player was born within 10 miles of Celtic Park. The Lisbon Lions defeated Inter Milan 2-1 with goals from Tommy Gemmell and Stevie Chalmers. Incidentally, Tommy Gemmell scored the first goal—and Celtic's only goal—in the 1970 European cup final, which they lost to the Dutch side Feyenoord, and he also scored Celtic's first-ever goal in the European cup, against FC Zürich in 1966.

Celtic won every competition that they entered in that famous 1966-67 season. They won the European cup, Scottish league division one, the Scottish cup, the Scottish league cup and the Glasgow cup.

Some say that the attendance at the European cup final was 45,000, and some say that it was 70,000. We can safely say that, whatever the attendance was on the day, many more people have since seen that famous game on television and the internet.

Of the approximately 12,000 Scottish fans who made the journey to Lisbon, many travelled in the Celticade, which was led by the Celtic fan and Glasgow *Evening Times* reporter Dani Garavelli. Perhaps even Mr and Mrs Adam were part of that: who knows? A hundred cars made the trip in the Celticade. Unfortunately, one unlucky fan woke up in Glasgow after getting a flight home and realised that he had left his car in Portugal.

Before the game, the manager, Jock Stein, told his players:

"If you're ever going to win the European Cup, then this is the day and this is the place. But we don't just want to win this cup, we want to do it playing good football—to

make neutrals glad we've won it, glad to remember how we did it."

Not just neutrals, but communities and fans from all sides of the footballing world, were brought together by what was a truly inclusive win.

I will move forward in time slightly, to the early noughties, when I used to work in a hotel in Glasgow. When Neil Lennon first signed for the club, he stayed in the hotel for his first few weeks. One day, he came down for breakfast and I gave him my Celtic strip to sign. He took it away and the whole team signed it. It was 2001 and, that season, Celtic won the treble, which was the first time that they had done so since the 1968-69 season, when the team had consisted of most of the Lisbon Lions.

More recently, names such as Sutton, Tébily, Moravcik, Mjällby, Lambert, Agathe, Valgaeren, Smith, Larsson and, of course, Martin O'Neill have been etched into Scottish football history. I am sure that there are many other names that could have been put forward since then.

That hotel was also the temporary home of Donegal Celtic supporters' club on match days. I remember arriving for work at 6 am on Sundays, to find them still in the lounge, playing guitars and singing Celtic songs. Some days, I would be lucky and get a spare ticket to a game.

In a speech about Celtic, it would be remiss of me not to mention one of my other past jobs, working for a charity called Football Aid, which is based here in Edinburgh, was set up by Celtic trustee Craig Paterson and has a vice-patron in Celtic ambassador Danny McGrain. One year, I attended a charity match at Celtic park with Tommy Boyd and Paul Lambert. I can say that I have scored a goal at Celtic park, but I should probably confess that there was no one else on the pitch.

I could fill up most of the afternoon with tales and stories. As James Dornan did, I struggled to get my speech inside the time allowed. However, I will leave members with thoughts of Jock Stein. Bill Shankly said of him:

"A great manager, my pal for years, a great man as well, with a heart of gold who'd give his last shilling. Aye, Stein, he's the best."

The *Glasgow Herald* wrote:

"Arguably the most important man working in this nation at this time."

A message on a bunch of flowers left on the night he died in Cardiff said, "Jock! Heroes live forever!" The man himself said:

"Celtic jerseys are not for second best. It is the jersey worn by men like McNeill, Gemmell, Clark, Auld, McBride and Chalmers. It won't shrink to fit an inferior player."

To those names, I add Simpson, Craig, Murdoch, Johnstone, Wallace and Lennox—and let us not forget assistant manager, Sean Fallon.

Presiding Officer, it may have been 50 years ago, but that remarkable game will live long in the memories of football fans all over the world.

13:27

The Minister for Public Health and Sport (Aileen Campbell): Before I begin, I want to reflect on what has been a remarkable debate that has spoken of football's reach, its cultural and societal impact and its power to do good.

Last night, although Monday's tragic events in Manchester put life, politics and even football firmly into perspective, Manchester United's victory against Ajax provided just a glimmer of light in this truly dark time. I place on record our congratulations to Manchester United on winning the Europa league.

I thank James Dornan for bringing the debate before Parliament this afternoon and other members for all the other contributions made across the chamber, including family memories and stories that were told often with great humour.

Unlike James Dornan, I am unable to remember that fantastic European cup win 50 years ago but, like all, I have seen the footage, both in black and white and in colour, and it remains as evocative today as it was then. The footage may be grainy, but the memories—and the place of the Lisbon Lions in history—will never fade. Jock Stein brought together a truly remarkable squad of players. Not only were the starting 11 all Scottish, but all hailed from within a 30-mile radius of Celtic park.

Like Pauline McNeill, I want to reflect on what Kevin McKenna wrote in his article—I am glad that she did not use the same bits as I want to use. I recommend that members read the article, in which he wrote:

“On one level, Celtic's 2-1 victory in the European Cup final over Internazionale, the champions of Italy, must stand as Scotland's greatest sporting achievement. Football then, as it is now, was the most popular sport in the world in terms of participation and commerce. That a squad consisting purely of men from the west of Scotland with no advantages or privileges of finance or sports science could win the world's premier football tournament was considered improbable then. It would be regarded as well-nigh impossible now ... There was light and joy in Celtic's play ... an exuberance that you might more commonly associate with Latin or African countries. It belied the grime and industrial drudgery of the places where the Lisbon Lions were reared.”

Celtic played “total football” before the phrase was even coined—they played the Glasgow Celtic way. Their victory remains iconic in Scottish sport; indeed it is an iconic landmark in British sport, as

Celtic—as others have recognised today—were the first British club to win the famous trophy.

It is fitting that as Celtic celebrate the 50th anniversary of their greatest-ever season, they are having another hugely successful campaign. This is difficult to admit as a St Johnstone fan, but Celtic have been absolutely phenomenal this season. Not only have they remained unbeaten all season, they have accumulated more than a hundred points and scored more than a hundred goals. In terms of silverware, Celtic have already won the league cup as well as their sixth premier league in a row, and they will be looking to complete the domestic treble when they face Aberdeen in the Scottish cup final on 27 May.

Those achievements were recognised in the Professional Footballers' Association Scotland and Scottish Football Writers' Association annual awards, when the club's achievements were recognised with a clean sweep: manager of the year going to Brendan Rodgers; player of the year to Scott Sinclair; and young player of the year to Kieran Tierney. It is a team that some have described as having a whiff of the Lisbon Lions.

I am delighted that the women are having a strong season, too. Celtic are near the top of the Scottish Women's Premier League and competed in the Scottish women's league cup on Sunday. I am also pleased that Christine Grahame, Pauline McNeill, Annie Wells and Gail Ross have shown that today, our beautiful game is for more than just men.

Scottish football sometimes makes the headlines for the wrong reasons, as Annie Wells noted, so I am delighted to be able to focus on the positives, as this Parliament comes together to celebrate one of Scottish football's greatest achievements.

Like many members who have spoken, I love football and am a big football fan. The memories that it creates are phenomenal and last a lifetime. Celtic's win in 1967 transcended clubs and geography. My dad—who was then a young man playing football for Kinrossie amateurs in Perthshire—remembers the win. He talks about it and how he cheered Celtic on. It is etched on Christine Grahame's memory, even though she is not a football fan.

Football creates stories, it creates drama, it raises passions and it creates heroes. The Lions are undoubtedly heroes; so, too, are the heroes in tangerine, the terrors of Dundee United, who, 30 years ago, did Scotland proud again, narrowly missing out on securing the UEFA cup final but again placing Scotland on the world football stage. I commend BBC Alba's documentary on their expedition into Europe.

George Adam and others spoke about our national team's successes in that era, the 1960s, and rightly commended the phenomenal record of Jock Stein and his Glasgow district 11. Willie Coffey talked about the achievements of Kilmarnock and James Kelly recognised the Lisbon Lions' win as his first-ever memory.

The memories are strong for every football fan. They might not always be of the glories of European cup games, but the power of football and its stories is why the Scottish Football Museum's football memories work is so important for a reminiscence therapy approach to helping those with dementia.

As the mother of a wee boy who is daft on football, I know that 47 years from now, he will still be talking about when St Johnstone won the Scottish cup 50 years ago. I hope that we might even be talking about a win in between times.

Football inspires memories and has a reach that no Government could ever dare to emulate. That is why it is also important to put on record our thanks to Celtic and all the other clubs that do so much work off the pitch to help the communities that they serve.

In summing up, I recognise and celebrate the remarkable achievement of the Lisbon Lions, and I hope that everybody involved with Celtic Football Club enjoys the celebrations during the 50th anniversary.

I thank James Dornan for the opportunity for us all to come together as a Parliament to pay our respects to the immortal Lisbon Lions. Heroes live forever and I am glad that we are able to recognise what they achieved. We will continue to remember the way in which they went about winning the cup—not just for Celtic but for Scotland.

13:34

Meeting suspended.

14:30

On resuming—

Contract (Third Party Rights) (Scotland) Bill: Stage 1

The Deputy Presiding Officer (Christine Grahame): The next item of business is a debate on motion S5M-05762, in the name of Annabelle Ewing, on the Contract (Third Party Rights) (Scotland) Bill at stage 1. I call on Annabelle Ewing to speak to and move the motion.

14:30

The Minister for Community Safety and Legal Affairs (Annabelle Ewing): I am very pleased to open the debate on the Contract (Third Party Rights) (Scotland) Bill. The bill is the result of some solid law-reform work on the part of the Scottish Law Commission, so I thank the team at the Scottish Law Commission for its considerable hard work in producing its report and the draft bill. I also thank the Delegated Powers and Law Reform Committee for its thorough and considered deliberations on the bill. I particularly welcome its stage 1 report and am pleased to note that the committee welcomes the bill and recommends that its general principles be agreed to. I am glad also that the committee recognises support among stakeholders for the bill and that the changes that the bill will make to current law are widely welcomed.

In the stage 1 report, the committee highlights a number of issues on which it has invited the Scottish Government to reflect. I hope that the committee has had an opportunity to consider my response to it. I will return to the issues within it in more detail a bit later in my opening remarks.

The bill addresses some fundamental difficulties in the law as it stands, and will remove the barriers that prevent people from having confidence in and using the law. The ability to create third-party rights is important. There are many reasons for third-party rights to be created, and the reasons apply to individuals as much as to businesses. For example, when booking a family holiday it may be beneficial for family members other than the person who booked the holiday to be able to enforce rights under the contract, but at present that area is plagued with difficulty.

Another example is life insurance, the proceeds of which are payable to another person. It would be of value to the third-party beneficiary to be able to enforce terms of the insurance policy in their favour—but again, in current law, that area is plagued with difficulty.

Another example is a company in a group taking out an information technology contract under

which it wants all the companies in the group to be covered. It may be helpful if group companies that are not party to the IT contract are able to sue—for example, in relation to losses that are suffered as a result of breach of the contract—but that is another area of economic life in which there is considerable difficulty under the current common law.

In everyday life and in business, it can therefore be very helpful to create third-party rights. They can provide entitlements and protections not just for businesses but, importantly, for individuals. For that reason, we need a legal system that is fit for purpose and which keeps up with the times. As the Faculty of Advocates' representative, Dr Ross Anderson, said when he gave evidence to the committee, the bill will

“ensure that ... Scots law provides the tools”—[*Official Report, Delegated Powers and Law Reform Committee*, 21 March 2017; c 8.]

that practitioners and others need.

The bill is intended to address a number of problems with the law as it stands. For a third-party right to be in existence, the current law requires that the contracting parties intended to benefit the third party and that the right is constituted irrevocably. However, that common-law doctrine is rarely used in Scotland and has been the subject of some criticism on the basis that it is inflexible, that there are many uncertainties surrounding its application, and that it does not meet modern standards. I note that the committee welcomes the abolition of irrevocability and welcomes the flexibility that the bill provides.

The law has also been criticised for being unclear. Lord Reed of the United Kingdom Supreme Court remarked that there is a need for commercial parties to have

“clearer rules in relation to third party rights under contract”.

The absence of confidence in the law as it stands among Scots law practitioners means that English law is sometimes chosen in place of Scots law to govern transactions that are otherwise Scottish in nature. The uncertainty over third-party rights and the lack of flexibility damage the reputation of Scots law by limiting its use.

Of course, it would be possible to allow the status quo to continue and, in effect, to leave it to the courts to improve the law through judicial reform. However, if that approach was taken, although some policy objectives might be achieved by the courts under the common law, that cannot be predicted or guaranteed and it would certainly take much longer than the statutory route that is offered by the bill.

I do not wish to engage in a law lecture—I see that there are some eminent jurists among us—but

the leading case on irrevocability dates back to the 1920s. I am sure that members on the Tory front bench know that I am going to cite the case of *Carmichael v Carmichael's executrix*, which is, of course, the seminal case on third-party rights and irrevocability. Even assuming that a suitable case might arise—which is doubtful if English law is used instead, as a workaround—there would be no guarantee that the policy objectives of the bill would be realised.

In addition, any court decision would examine only the relevant facts of the particular case and would be unlikely to look at the law in the round. It would therefore be unlikely to produce a comprehensive solution in the way that the bill does. Such uncertainty is unsatisfactory for practitioners and others who have to base advice to clients on the present law. We therefore see no benefits in the non-statutory approach. The law in Scotland on third-party rights would likely remain out of date and inflexible and would continue to constitute an unnecessary hindrance to business and individuals alike.

I therefore welcome the positive evidence that has been presented to the committee from a range of witnesses. Although, like the committee, we do not think that the bill will result in transformational change overnight, we are confident that placing third-party rights on a statutory footing will represent a significant improvement on what we have now, and that over time—not too long, we hope—we will see an increase in the use of Scots law. By that, I simply mean that, where Scottish solicitors are currently turning to alternatives and workarounds, including applying English law to a contract or to part of it, or having recourse to collateral warranties because of a lack of confidence in our law as it stands, and because of the current difficulties with which the committee is familiar, there will be the welcome option of using the new legislation. It seems to be clear that there are practitioners out there who are keen to make use of it.

More than once I have heard, as the Law Society of Scotland rightly pointed out in its briefing ahead of the debate, that although some people might be able to adopt expensive and complicated workarounds to the law as it stands, that facility is not available to everyone, but everyone deserves a legal framework that works. The bill will deliver that.

It is fair to say that any issues with the bill have focused on a few drafting matters. As I mentioned, the committee invited the Scottish Government to reflect on those. I will turn now to some of those issues. I am grateful to the committee for bringing them to my attention.

One issue that the committee raised is whether the bill inadvertently fails to preserve conditional

undertakings that are constituted before the legislation comes into force and where the third-party right may, in fact, crystallise after commencement of the legislation. That point was noted in written evidence from Shepherd and Wedderburn LLP. The concerns relate to section 12, which will abolish the common-law rules on third-party rights, which are otherwise known as *jus quaesitum tertio*. We have considered carefully the points that Shepherd and Wedderburn raised and which were discussed in committee, as it clearly was not our intention to hinder the enforcement of such putative third-party rights. We therefore agree that the bill should be amended to address the issue, so I will lodge an amendment at stage 2 to do that.

Similarly, we have reflected on the provision in section 10, which relates to the renunciation of a third-party right. On the basis of the view that was offered by Professor Vogenauer on that section, and the Law Society's evidence to the Scottish Government that the provision is superfluous, we have concluded that section 10(1) is not needed. Section 10(1) is simply a statement of what is already a matter of general principle, and we agree that there is no need to restate that in the bill.

We are also still considering whether a change should be made to the arbitration provisions at section 9 of the bill to address the concerns that were raised by the Faculty of Advocates. Officials have written to the faculty's witnesses, Dr Ross Anderson and David Bartos, about the matter because I think that their concerns might be down to a small misunderstanding. Officials have suggested a meeting with those representatives of the faculty. I assure Parliament that, if there is a better way of implementing the Scottish Law Commission report, I will be happy to reflect further on that.

The Scottish Government is absolutely committed to the principle that legislation should be clear and accessible. However, it also needs to be effective. On section 1, as I have set out in my response to the stage 1 report, the Scottish Law Commission gave careful consideration to the use of the word "undertaking", and concluded that it is the most suitable choice because the undertaking may be found expressed or implied in one or more terms of the contract.

Against the background of that careful consideration, we are not inclined to interfere lightly with the commission's recommendation—number 5 in its report—that

"The provisions in a contract which are intended to comprise the third party's rights thereunder should be referred to as the 'undertaking'."

On whether the section is unclear about what the benefit is to the third party, we think that the

cumulative effect of sections 1 and 2 is that the undertaking in favour of the third party must be contained in the contract; that it must be clear that the contracting parties intended to confer an enforceable right upon the third party thereby, although their intention need not be stated as such expressly, but can be implied from other wording in the contract and admissible surrounding circumstances; and that the third party must be identified in or identifiable from the contract. I think that, from that, it is clear that a third party merely benefiting from a contract between others without any of the other requirements being in place is not enough to create any right for that third party, and we are therefore content with the effect of section 1.

As I explained in my response to the committee, the provisions at sections 4 to 6 need to be capable of dealing with a wide and sometimes complicated range of circumstances, and must be fit for all purposes. We are concerned that, in paring down the provisions to make them more streamlined, we might lose that capability, which would be highly undesirable.

However, in any case, I flag up the fact that there was no real consensus among witnesses about what the revised drafting should look like. It is fair to say that their views were mixed. Some found the drafting to be quite wordy, but others were content that the words reflect the product of some careful consideration by the Scottish Law Commission. Ultimately, everyone was, I think, of the view that the sections will achieve the right result. That is very encouraging, and I think that that is most important. For all those reasons, we do not intend to amend sections 4 to 6. I hope that the committee is reassured that we have thought carefully about what it said in its stage 1 report.

It seems to be clear that the bill has struck the right balance by providing an effective legal framework for third-party rights while preserving the rights of parties to decide whether they want to give third parties rights, and how they want to give them those rights. As Karen Fountain from Brodies LLP put it,

"people will have more confidence that what they've written down will work".

I move,

That the Parliament agrees to the general principles of the Contract (Third Party Rights) (Scotland) Bill.

14:43

John Scott (Ayr) (Con): As the convener of the Delegated Powers and Law Reform Committee, I am delighted to speak on behalf of the committee on the Contract (Third Party Rights) (Scotland) Bill. I refer members to my entry in the register of members' interests.

The bill proposes changes to the law in Scotland that allows parties to a contract to create rights for third parties. The main aim of the bill is to make the law clearer and more usable in this area.

Members will be aware that this is a Scottish Law Commission bill. The Scottish Law Commission bill process is a relatively new one that was created in order to improve the implementation rate of Scottish Law Commission reports.

This bill is the third Scottish Law Commission bill to be considered by the Delegated Powers and Law Reform Committee following changes to standing orders in 2013. The committee took evidence from law bodies, academics, arbitrators, representatives from the Scottish Government and, of course, the Scottish Law Commission. The committee endeavoured to capture a wide range of views on the bill. The committee heard evidence from legal practitioners representing the sectors that are most likely to be affected by the bill, including the finance and construction industries and less obviously affected areas such as the agricultural sector. We also considered the implications of the bill on small businesses and individuals.

By way of background, I now turn to the current law on third-party rights in Scotland, which is based on common law and which has existed for centuries. I will briefly explain what is currently required to create third-party rights in Scots law.

First, there needs to be a contract. Secondly, that contract must identify the third party in some way and the intention of the contract to confer a right on a third party, whether by implication or derived from an express provision in the contract. Lastly, the third-party right needs to be irrevocable, meaning that it needs to be clear to a third party that the contracting parties to the contract intended to give up their right to change their minds about granting a third-party right.

There are concerns about the lack of clarity and certainty and about the inflexibility in the current law, which has resulted in legal practitioners and their clients not using the Scots law of third-party rights and instead relying on English law or workarounds such as collateral warranties.

Further, a key problem with the current common law on third-party rights is that it has been developed on the basis of case law, but that development is itself dependent on cases being brought. As that is an area of law where no cases have been brought, there is continuing uncertainty as to the position of the law. Indeed, the current position was dramatically explained to the committee by David Christie of Robert Gordon University as a “death spiral” of third-party rights, as the lack of clarity in the law prevents their use,

which therefore leads to a lack of case law, which in turn prevents the law from being developed, meaning that the uncertainty continues.

The uncertainty that the bill seeks to remedy stems from a House of Lords judgment that was made in the 1920s, to which the minister referred. It stated that, once someone had been given a third-party right, it was irrevocable. In other words, it could not be taken away, cancelled or modified. The committee heard that that judgment has created significant inflexibility in the law and, as a result, legal practitioners tend to shy away from using it, more recently favouring English law or workarounds instead. Therefore, the main proposal of the bill is to abolish the existing rule that third-party rights have to be irrevocable once created, thus making it easier to create and subsequently remove third-party rights in contracts.

To help the committee understand how the bill might be used in practice, the Scottish Law Commission helpfully provided some examples in its written evidence to the committee of when the bill might be used in practice. For example, the bill will make it easier for contracting parties to create third-party rights in their contract, even if a third party does not yet exist. That is often the case in relation to companies within a group structure that have not yet been formed at the time of creation of the third-party right.

I now turn to the committee’s key conclusions on the bill. First, it is clear that there is universal support for the bill, as moving from the current common-law position to a statutory footing will provide greater clarity for users of the law, namely legal practitioners and their clients. As well as greater clarity, the bill will provide greater flexibility for users of the law. As I have mentioned, it is currently the case in Scotland that third-party rights have to be irrevocable to be made. The proposed legislation will abolish that rule and make it easier to create and also subsequently remove third-party rights in contracts. The committee therefore welcomes the abolition of that rule.

Nonetheless, and while recognising that it was not appropriate for the bill, the committee’s report encouraged the Scottish Government to reflect further on the protections that are in place for smaller businesses. It is therefore pleasing to note the role highlighted in the Government’s response for the small business commissioner in affording those protections to smaller businesses.

The committee also recognises that protections and balances are required to protect third parties, particularly as the bill will allow those rights to be changed or cancelled altogether. The committee therefore welcomes the protections that are included in the bill at sections 4 to 6. However, I

would like to highlight concerns that a variety of stakeholders have raised about the clarity and usability of the provisions in those sections. Although the committee welcomes the protections for third parties that are included in those sections, we invited the Government to reflect on the evidence received from stakeholders, particularly the Faculty of Advocates, on sections 4 to 6. I note from the response to the stage 1 report, and from what the minister has said today, that the Government does not intend to amend those sections. I recognise that there was no unanimity on how those sections should be amended, but it is perhaps a little disappointing that a revised form of words could not be found.

The committee also received evidence from stakeholders highlighting the need for greater drafting clarity in sections 9, 10 and 12. Although I do not intend to detail those drafting concerns, we welcome the Government's commitment to lodge amendments to sections 10 and 12, and to reflect further on the drafting of section 9.

I have outlined some of the principal benefits that would be derived from passing the bill, but the committee is also aware that it may not be widely used in the short term. Indeed, the committee heard evidence that the equivalent new legislation in England and Wales, which has been in place since 1999, is only recently starting to be used. However, it is worth highlighting that the Scottish context with regard to third-party rights is different from the English one. As I have mentioned, there is already a legal tradition of third-party rights in Scotland under common law that did not exist in England and Wales prior to 1999. Therefore, the bill does not start from a blank sheet of paper on third-party rights. On that basis, the committee recognises that there is scope for the legislation to be used more quickly than has been the case in England and Wales.

There are both technical and financial difficulties associated with the continued use of workarounds such as collateral warranties, so the committee believes that there is good reason for greater use of the proposed legislation to avoid those difficulties in the future.

I highlighted at the start of this speech the importance of ensuring that Scots law is fit for purpose in order to remain modern and competitive alongside other legal systems across the world. Our committee is of the view that the introduction of the bill would be a useful tool for legal practitioners and their clients to have available to them when setting up third-party rights in contracts, and we encourage the Government to promote the advantages of the legislation should the bill be passed by the Parliament. The committee therefore has no hesitation in

recommending to the Parliament that the general principles of the bill be agreed to.

14:54

Murdo Fraser (Mid Scotland and Fife) (Con): I start by reminding members of my entry in the register of members' interests, which states that I am a member of the Law Society of Scotland, although I note that I do not hold a current practising certificate.

I have faced many challenges in my career as a member of this Parliament. There are the complex constituency cases with which we are all so familiar, in which it seems that, no matter what effort is put in, it is almost impossible to get a resolution that satisfies the constituent; there are the lively chamber debates on a variety of divisive issues on which party positions have to be set out and defended; and there are the constant pressures of juggling workload with competing parliamentary, constituency and family demands. However, I can honestly say that I have faced few greater challenges in my parliamentary career than trying to craft a seven-minute speech to open this debate on the bill before us.

In saying that, I intend absolutely no slight on the diligent and hard-working members of the Parliament's Delegated Powers and Law Reform Committee and its able convener, my colleague John Scott, who has just opened the debate for the committee. I enjoyed reading the committee's report, which was a very fair and balanced summary of the issues that the bill faces and addresses. It is fair to say, however, that there is not a lot of controversy around what is proposed. The two and a half hours that had originally been allocated to debate this afternoon's topic seemed rather overgenerous, and I am sure that I am not alone in being relieved that the time has been reduced to two hours. I suspect that many of us will end up making very similar points over the course of the afternoon, and I am refreshed by the fact that I am one of the earlier speakers in the debate.

To the bill, then, which has arisen from work done by the Scottish Law Commission. The commission is an excellent and probably undervalued body, whose members beaver away to address important, if sometimes seemingly minor, changes in the law, and I echo the minister's remarks about its importance and its approach to legislative reform.

The bill deals with third-party rights, specifically allowing rights to be conferred by contracting parties upon a person who is not a party to the contract. In Scots law, this is known as the *ius quaesitum tertio*, if I remember the pronunciation correctly from my law lectures many years ago.

The Deputy Presiding Officer: It is good enough for me, from what I can remember.

Murdo Fraser: Thank you, Presiding Officer.

As we have heard, the issue identified by the commission was that third-party rights could be conferred only if they were deemed to be irrevocable. That created a problem for those dealing with commercial contracts, because if a third-party right was not deemed to be irrevocable, it could not be enforceable in the Scottish courts. In practice, there were many situations in which it did not suit the contracting parties to have those third-party rights deemed to have been granted on an irrevocable basis.

However, there is always a way around such problems. In practice, Scots lawyers have got round them by drafting collateral warranties, which are separate documents that convey a specific third-party right and which stand alongside the main contract document. I well remember from my own legal experience good practical examples of where the issue might arise. For example, when a new building is constructed, a developer will engage a range of professionals, including an architect, a structural engineer and a surveyor, in the construction contract, and the contract itself will be between the developer and those professionals. However, on completion the building will usually be sold on to a third party or leased, and the new owner—or the new tenant—has no direct contractual relationship with the architect or the other property professionals. As a result, if a fault with the building arises that leads to a claim being made—and if appropriate warranties are not in place or if the matter has not been addressed in another fashion—it will not be possible for the new owner or tenant to pursue the professionals involved in the event of any negligence on their part.

As I have said, under existing practice, people have got around such problems with collateral warranties from the professionals involved. Indeed, in a previous life, I made a reasonable living out of drafting and revising such documents. However, the changes in the bill will require at least a new approach to the issue and might well mean that such extensive warranties are no longer required in such situations; it might even make it easier to enter into commercial or construction contracts.

Annabelle Ewing: It might be interesting to draw members' attention to recent reports that certain difficulties are appearing with regard to enforcement of collateral warranties. That is another trend that we should perhaps take into account.

Murdo Fraser: I am grateful to the minister for her intervention. That is a useful additional piece of information to bear in mind.

As the committee said in its report, we have known about the third-party rights problem for a long time. Indeed, the issues go back to the second world war. In England and Wales, the problem was identified as far back as 1937 but was legislated for only in 1999. The gap in Scotland has been somewhat longer, but the good news is that the bill was introduced only three years after the date on which the Scottish Law Commission issued a discussion paper. We have therefore moved relatively quickly to resolve the issues since the commission brought the matter to people's attention.

The bill has been widely welcomed by stakeholders on all sides. As the committee noted, a few minor concerns about the drafting have been raised, on which the Scottish Government has been asked to reflect. I welcome the minister's comments about how the Government intends to respond to the points in the committee's report. Overall, the bill seems to have universal support.

The committee considered how quickly the bill will be used, once it has been passed and implemented. Now, lawyers are, by their nature, conservative beasts—I stress that it is “conservative” with a small c, for the purposes of the *Official Report*, although of course sometimes it is with a large C, too—and it is likely that it will take some time for working practices to adjust to the new legislation. As John Scott said, in England and Wales, the Contracts (Rights of Third Parties) Act 1999 took a long time to be used. However, there will be, in time, a new approach to the preparation of contracts, and perhaps there will be less paperwork than there is currently. In theory, less paperwork will mean quicker deals and lower costs for clients, although from my days in the legal profession I do not want to be overoptimistic about what can be achieved in that regard.

Presiding Officer, I have done my best to fill my time on the subject. This is a worthwhile bill and the Scottish Conservatives will be happy to support it at stage 1. I hand on to other members the challenge of continuing the excitement.

The Deputy Presiding Officer: You are indeed lucky to have spoken so early in the debate. I am wondering what other members will manage to say, but I have no doubt that they will come up with something.

15:02

Claire Baker (Mid Scotland and Fife) (Lab): I associate myself with Murdo Fraser's opening comments, and I thank the committee for its stage

1 report on the Contract (Third Party Rights) (Scotland) Bill.

The Delegated Powers and Law Reform Committee is a fairly recent creation of the Parliament, and I understand that this is the first bill that it has considered in this parliamentary session. The committee was established in recognition of the pressures on the Justice Committee, in particular, in previous sessions. It developed out of the Subordinate Legislation Committee and has the additional role of being the lead committee for bills that arise from Scottish Law Commission reports. Although it is recognised that the Scottish Parliament, as an institution, has facilitated a significant and necessary increase in law reform, it can still be difficult to secure parliamentary time for Scottish Law Commission bills. The appointment of a dedicated committee provides greater opportunity for scrutiny and legislation.

The Scottish Law Commission plays an important role in ensuring that our laws are relevant, easily understood and consistent. It was established more than 50 years ago and its task is to recommend laws that will improve, simplify and update the law of Scotland. As the bill that we are considering illustrates, the relationships that are governed by laws constantly develop and change as society changes, and it is important that the law keeps pace with changes in the way in which we live, work and do business.

The process in which we are engaged is therefore important. If our laws are outdated or unnecessarily complex they can lead to injustice as well as inefficiency. Law that is in need of reform can increase inequality and limit access to justice. The law must be relevant to how people live in society. It must facilitate good business relationships and support people's personal decisions.

The bill enjoys a degree of consensus among committee members and the witnesses who gave evidence to the committee. That might suggest that law reform is easy, but a look at other recommendations that the Scottish Law Commission has made, including the abolition of feudal tenure of land and the protection of the rights and interests of adults who are incapable of managing their own affairs, demonstrates that changes can generate a great deal of debate and discussion—although that perhaps does not apply to the changes that we are considering this afternoon. The bill has been thoroughly discussed by the committee and I thank those who provided evidence over a number of weeks.

The bill was introduced following a long-established understanding that the existing common law governing third-party rights is no longer fit for purpose, and a growing confidence

that it should be replaced with new statutory rules. A Scottish Law Commission discussion paper from 2014 identified the range of legal and practical problems arising from the current law on third-party rights—primarily, those are concerns around clarity, certainty and inflexibility within the current law. The absence of clarity, certainty and flexibility has meant that legal practitioners and their clients typically resort to the use of English law or workarounds such as collateral warranties rather than Scots law on third-party rights. In evidence, it was recognised that

“The law does not allow the flexibility that people need in today's commercial or indeed personal legal transactions.”—[*Official Report, Delegated Powers and Law Reform Committee*, 14 March 2017; c 7.]

Although the bill is widely supported, a few issues were raised for further consideration as we look towards stage 2. The bill changes the rights of third parties by abolishing the irrevocability rule and introducing new flexibility, but the counter is the need to protect third parties, given that their rights could then be changed or cancelled altogether. Some improvements to the drafting have been suggested, and the Government should further reflect on them. One of the more interesting comments in that regard came from Craig Connal QC, who said in evidence:

“when I see sections that talk about ‘reliance’ and ‘to a material extent’ I wonder what that means and think to myself that we can litigate over that.”—[*Official Report, Delegated Powers and Law Reform Committee*, 28 March 2017; c 22.]

In evidence, the Government said that it was reluctant to redraft but in a briefing for today's debate, the Law Society of Scotland says that signposting of the content and effect of sections 4, 5 and 6 would improve the accessibility of the legislation—that suggestion underlines the purpose of the bill. There was also evidence of a need to redraft parts of section 9, on arbitration, but again the Government appeared inflexible about that in committee. However, I recognise the Government's commitment to review those sections—the minister has commented on that this afternoon—so we will see what arrives at stage 2.

There was a discussion at the committee about arbitration as the only available dispute resolution mechanism. It was suggested that that might not best serve all contracts—particularly construction contracts—and that it might not provide flexibility. I note the comments from both the committee and the minister that they were not persuaded of that case, but I hope that there is an opportunity for further reflection.

The bill aims to provide a new statutory framework, with clearer, more usable rules on third-party rights and clarity in Scots law. However, there is at the outset a recognition that, while the

bill seeks to address the use of workarounds or the deployment of English law, it is not expected to be widely adopted any time soon. Although there is undoubtedly evidence that supports the need for the bill, it is initially unlikely to be used very often, with a preference for the familiar and a tendency towards caution—or conservatism, as described by Murdo Fraser—to be anticipated from the legal profession. However, witnesses, including the Law Society and the Royal Incorporation of Architects in Scotland, suggest that the benefits offered by the bill may encourage legal practitioners and clients to use it, particularly in the pursuit of flexibility, which is currently offered by English law. Others identified difficulties with the use of collateral warranties.

The Faculty of Advocates makes an interesting point that the accessibility and clarity of the bill may be an advantage to people who are unable to access “expensive legal advice”. The Law Society of Scotland briefing states:

“It is important to bear in mind, that the legislation will significantly improve the position of parties who were always going to use Scots law, particularly those who cannot afford the legal advice necessary to set up an arrangement which uses foreign law or a complex alternative. Their interests should not be forgotten.”

If the bill can increase equality in good legal practice, that is to be welcomed. There is, however, no expectation that the bill will immediately make any difference to working practices, although it addresses an identified weakness in Scots law and provides an additional tool to be used alongside existing alternatives.

There is a role for the Scottish Government and partners in highlighting the potential benefits of the bill. Although challenges were identified, raising awareness will lead to the appropriate use of the bill, increasing confidence and familiarity. In advance of the bill being passed, the Government could reflect on the most appropriate way to achieve that.

The Deputy Presiding Officer: Now the challenge for the open speakers: I call Stuart McMillan, to be followed by Alison Harris.

15:09

Stuart McMillan (Greenock and Inverclyde) (SNP): I do not need to address the whole bill, as the minister and John Scott, the convener of the Delegated Powers and Law Reform Committee, have undertaken that role in their usual efficient and meticulous manner.

I was quite impressed by the contributions from Murdo Fraser and Claire Baker, which showed their understanding of what we discussed in committee as we went through the evidence. Murdo Fraser made a speech of seven minutes—

although it felt as though he was struggling to manage that—and the whips will have watched and listened to him this afternoon and appreciated that that was his pitch to get a transfer to the Delegated Powers and Law Reform Committee so that he can undertake this piece of work and further SLC bills. He is not denying it, so it must be true.

I want to discuss a couple of points that have been touched on by previous speakers but which are worthy of further debate. However, before that, I want to address one issue. As members know, the bill has come about because of the work of the Scottish Law Commission. It is the third such bill and it is the first time in this parliamentary session that the SLC has sent a bill to the Delegated Powers and Law Reform Committee. In the previous parliamentary session, I was on that committee and we undertook a similar piece of legislation, which was the Legal Writings (Counterparts and Delivery) (Scotland) Bill. If memory serves me correctly, it was the minister’s brother, Fergus Ewing, who steered the bill through.

At that time, I thought that the Delegated Powers and Law Reform Committee was a useful tool to have in the armoury of the Parliament when it comes to law reform. I am genuinely delighted that the committee now has the power and responsibility to look at law reform, as it helps with the wider issue of law reform in Scotland.

The Delegated Powers and Law Reform Committee has been supportive of the bill, as those who have provided evidence have suggested. Paragraphs 27 to 40 of the committee report touch on the speed of law reform and the introduction of the bill, as others have said. As the evidence shows, there was not much concern about that. Nonetheless, given that SLC proposals are on smaller, focused legislative improvements, I asked the minister whether she and the Scottish Government, along with the SLC, would consider whether further SLC bills could incorporate more than one area of law reform. I am pleased that the minister provided a commitment to explore that issue in the future. Law reform does not take place regularly or in a vacuum and, as the bill and the area that it covers highlights, if it is possible to improve and update the law by more SLC bills covering multiple areas, we could make even more headway with law reform. However, we are not alone, as the bill highlights, and similar legislation was first mooted in Westminster in 1937, with a bill being presented to the UK Parliament in 1999.

In the bill, the codification of the law of third-party rights provides certainty for users of Scots law, which our report highlights in paragraphs 51 to 61. Law firms will be able to use that certainty in

legislation instead of using expensive collateral warranties or law from other jurisdictions. Murdo Fraser touched on the area of collateral warranties, which was also touched on as we went through the evidence. Collateral warranties can be expensive and there was a hint that some organisations might prefer to still use them, because of the revenue that they can generate for those firms. The bill that is in front of us will help to deal with that and will help Scots law. In our case, it will ensure that cases that do not use English law can use Scots law.

Witnesses were clear that there will not be a rush to use the new legislation, because training will certainly be required once the bill has been enacted. Nonetheless, it will in time be used for a greater number of contracts, and that can only be of economic benefit for Scotland.

The evidence from Karen Fountain, who is a partner at Brodies LLP, was particularly useful. She said:

“The bill is effectively taking us back to the Ronseal moment: the contract should do what it says on the tin. At the moment, you cannot be confident that that is the case, and you need to be confident.”

That was a very strong argument to use.

Jonathan Gaskell of DLA Piper also provided positive evidence. He stated:

“For that reason, the bill is a good thing: it codifies the existing law and gives certainty.”—[*Official Report, Delegated Powers and Law Reform Committee*, 21 March 2017; c 17, 18.]

My final point concerns sections 4 to 6 of the bill. Witnesses presented their opinions on the clarity of those sections, and the evidence that we took as a committee was clear. The Faculty of Advocates suggested that they are not easy to follow, and the Law Society of Scotland shared that view. The Law Society of Scotland presented members with a useful briefing for the debate, which highlights those sections, and it has provided a suggestion to assist with making them clearer. I absolutely agree with the minister’s evidence to the committee—we touched on that in paragraph 90 of the stage 1 report—but, in paragraph 91, the committee invited the Scottish Government

“to continue to reflect on the clarity and usability of these provisions.”

As members will know, we received the Scottish Government’s response today. Having read it—I will read it again, as well as members’ contributions this afternoon—

The Deputy Presiding Officer: I never thought that I would have to say this, but I am afraid that I must ask you to conclude.

Stuart McMillan: I have been enjoying the bill. Okay. I conclude by saying thank you very much, Presiding Officer.

The Deputy Presiding Officer: I notice that this is your second stint on the Delegated Powers and Law Reform Committee. You are a rarity.

15:16

Alison Harris (Central Scotland) (Con): I very much welcome the opportunity to participate in this debate on the Contract (Third Party Rights) (Scotland) Bill, and I thank the Scottish Law Commission for its work, which led to the introduction of the bill, and for helping us to understand the importance of reform in this area of law.

As a member of the Delegated Powers and Law Reform Committee, I have been involved in the scrutiny of the bill and, with my fellow committee members, I have heard compelling evidence on why the general principles that it captures are the correct ones. I therefore support the bill at stage 1.

Let me turn first to the problems that have been consistently identified with the current approach in common law. We heard from the Scottish Law Commission that the common law was not fit for purpose and that waiting for the courts to change it could take decades. Lord Reed of the UK Supreme Court said that there was a need for

“clearer rules in relation to third party rights under contract”.

Indeed, the current law has remained unchanged since 1920. In our modern market economy, the requirement for reform is more pressing, and that is why it is up to us in the Parliament to embark on reform.

One of the main challenges that the current law presents is that it has contributed to significant legal uncertainty. The Law Society of Scotland has said that lawyers are really not comfortable with giving advice to clients in such areas, where the law is unclear. For example, it is not even clear at present what remedies are available to third parties in the event that their rights have been breached. The Scottish Law Commission highlighted that issue as one of the main benefits of codifying the law, and referred to

“the most significant uncertainty in the current Scots law of third party rights.”

The requirement for third-party rights to be irrevocable is another serious issue with the existing legal position. Essentially, that means that, for a third-party right to even be created, the parties must intend to give up the right to change their minds about granting the right at any point in the future. The committee heard a lot of evidence that echoed the concerns of the Scottish Law Commission, which suggested that parties are

deterred from creating third-party rights at all because of that requirement and lawyers are left looking for workarounds, such as using English law instead. That happens because the legislation in England—the Contracts (Rights of Third Parties) Act 1999—grants much greater flexibility to the contracting parties. It allows them to terminate or vary the terms of the contract without the consent of a third party. That kind of approach encourages the parties to create third-party rights in a way that Scots law deters them from doing.

Bringing the law in Scotland on to a statutory footing is beneficial. However, as the committee heard from Hew Dundas, who is the honorary vice-president of the Scottish Arbitration Centre, the bill will also be beneficial as it will bring some harmonisation between Scots and English law. He said—and I agree—that

“it would be unfortunate if we tripped up on a difference in principle between English and Scottish legislation, given that there is such a high volume of common trade”.—*[Official Report, Delegated Powers and Law Reform Committee, 18 April 2017; c 5.]*

The main principle that the bill promotes is the abolition of the existing rule that third-party rights have to be irrevocable in order to be created. Contracting parties are severely restricted because they cannot build flexibility into the contract at the outset, or respond in a flexible way to events as they unfold. The bill can also bring greater clarity to third parties about how they can enforce their rights, in a way that they cannot do currently.

It is essential that, when the Scottish Law Commission and practitioners tell us that the common law creates commercial barriers, we respond accordingly and pass legislation to remove those barriers. The committee’s stage 1 report highlighted the fact that the general principles of the bill had very broad support, but identified a few areas in which it could be strengthened. While the evidence that we heard suggested that the bill might not be widely used in the short term, I hope that the greater flexibility that it allows will encourage parties to make use of it in the future. I also welcome the Scottish Government’s commitment to reflect on the committee’s comments about the drafting of some of the provisions, and I hope that those concerns will be addressed as the bill proceeds. As we work to overcome those challenges, the general principles of the bill remain the correct ones, in my view.

The bill gives us the opportunity not only to bring greater clarity to the law, but to create a framework that will allow third-party rights to become usable. Third-party rights that are properly created and able to be revoked in certain circumstances will be positive for the parties to the

contract as well as for third parties themselves. By building greater flexibility into our system of third-party rights in Scotland, we can offer the commercial environment that contracting parties and third parties need. I sincerely hope that the bill can achieve its objectives and that it will address the concerns that have been identified in the current law.

I thank members for listening as though they had not heard all this earlier on in today’s debate.

The Deputy Presiding Officer: You are a wee hero.

15:22

Ben Macpherson (Edinburgh Northern and Leith) (SNP): I refer members to my entry in the register of members’ interests as a non-practising member of the Law Society of Scotland, and also to my history of employment as a solicitor with Brodies LLP, some of my experience of which I will refer to during the debate.

I thank the Scottish Law Commission for carrying out the process that has brought us to debating the bill at stage 1. I thank members for their speeches. I also thank members of the Delegated Powers and Law Reform Committee for their arguments in committee and the committee’s witnesses for their evidence.

I warmly welcome the bill and the principles expressed in it, as a development to ensure that Scots law is fit for purpose in a modern commercial environment, that it is flexible and ready and, crucially, that it can provide contract security. The codification of third-party rights will be helpful for practitioners and their clients, as Murdo Fraser rightly said. It will remove a practical barrier to commercial transactions, so that they will be able to meet modern-day expectations.

As has been stated already, the codification and the principles of third-party rights relate to the ability of parties who are not directly party to the contract in question to have rights within that framework. Members have rightly alluded to a few different aspects of commercial law, and I will do the same.

In evidence given to the committee, and particularly in the report by the Scottish Parliament information centre, it was stated that the new provisions will have application in insurance and also in pensions, but in the debate the focus has been on construction law. In my experience as a trainee solicitor working on construction contracts, it is that aspect that will be of most practical use.

A funder, a buyer or a tenant can create a direct relationship with and claim losses from third parties. A common example that has been used is from construction and is, for instance, a

subcontractor such as an architect, or other subcontractors to a commercial contract, such as electricians.

The ability to create that relationship within the contract itself will certainly be of use to practitioners and those who are seeking to take forward construction contracts. It will also be of use to those who are involved in commercial property transactions around previous construction projects.

For example, I worked on a transaction once that had multiple aspects to it. Elements of the construction were based in English law and other elements were based in Scots law. As third-party rights are available in English law, they were drafted into the substance of the contract, whereas the Scots law elements of the contract required collateral warranties. I remember thinking one evening during that deal that I was going to be able to go home after finishing the Scottish contracts and being told, “No, we have to do the collateral warranties now.”

For anyone working in construction, there are nuances about construction law and the inclusion of third-party rights. It may sometimes be advantageous to put the rights in collateral warranties, for example, and there are questions around when step-in rights are advantageous.

However, overall, for construction lawyers and those involved in the construction business, the bill will assist them by providing the legal frameworks that are necessary, thus creating an environment where construction projects can be developed with less legal work being required—although I appreciate Murdo Fraser’s point that that is not always the case.

The bill will also be useful in terms of financing projects. For example, for renewable energy projects, financiers will now be able to create third-party rights within the contract rather than having to rely on collateral warranties. That will be helpful for Scotland’s renewable energy industry.

I warmly welcome the element of flexibility. The removal of irrevocability and the ability to set up flexible contracts at the outset and to adjust contracts in response to events will be useful aspects in terms of developing the law.

I welcome the fact that arbitration is included in the bill. In my previous role as a lawyer, part of my work was on contracts that went to arbitration, and any mechanisms that can help to make it easier for parties to seek arbitration rather than go through litigation should be welcomed.

I also welcome the minister’s consideration of the points on drafting that have been raised by the committee and by stakeholders. I think that we can all work together to make the bill as user friendly

as possible and, in the words of the Law Society of Scotland, something that helps to promote Scots law for the benefit of all, so that Scots law contracts can be used in Scotland where advantageous and required.

15:28

Monica Lennon (Central Scotland) (Lab): I am pleased to have the opportunity to speak in the debate to agree the general principles of the Contract (Third Party Rights) (Scotland) Bill. I am one of the members of the Delegated Powers and Law Reform Committee and, as members have heard, we have taken extensive evidence on this Scottish Law Commission bill in recent months. If anyone has been wondering what we do on a Tuesday morning, they now have some idea.

I echo the opening comments of our convener, John Scott: there are a lot of people to thank. They have been thanked already—I will just add my thanks to them as well.

I am not a lawyer as, I know, many members are, and the matter is very technical, so from the outset I was keen to understand why the bill was required and who would benefit from it. We have had many weeks to consider those points, and as the process has moved forward I have been persuaded of the bill’s merits.

The minister, in her opening remarks, explained that third-party rights are helpful in everyday life and in business, and it is therefore important that Scots law is effective and keeps up with society. There is consensus that the current common-law arrangements do not achieve that, and that the bill will provide a welcome remedy; it is good that we all agree on that.

At the Delegated Powers and Law Reform Committee, we explored in written and oral evidence the question of what benefits would be derived in moving from the current common-law position to a statutory footing. We heard that case law is unlikely to develop fast enough to deal with the problems in the law that have been identified. Indeed, the bill team and the Scottish Law Commission have indicated that relying on the common-law position is unsustainable.

Many of the witnesses raised concerns about the legal uncertainty arising from the current common-law approach, and the underlying rationale for introducing the bill is that the current arrangements are simply not fit for purpose. A lack of certainty in the law prevents the use of third-party rights, which leads to a lack of case law, thereby preventing the law from being developed. John Scott quoted David Christie of the Robert Gordon University, who eloquently described that scenario as a “death spiral”.

The evidence overwhelmingly showed that the system needs an upgrade, and the bill therefore seeks to codify the existing law on third-party rights in one easily accessible place, which is a very welcome step.

I contemplated many times during the committee's deliberations the question of how the bill will be used. If the bill is enacted, will it be a useful law that will be used in the face of competing and well-established workarounds and reliance on English law, as we have heard today?

One of the themes that emerged from our evidence sessions was that the bill's purpose is to clarify the law in Scotland and, as the policy memorandum states, to

"promote the use of Scots law".

Scottish Law Commission officials stated during evidence sessions and as part of the SLC's investigation that lawyers in Scotland are currently applying English law to Scottish contracts, although it was not possible for that to be quantified in any way other than through anecdotal evidence.

In response to questioning on that particular point, Professor Hector MacQueen of the Scottish Law Commission said:

"It is certainly not that we have anything against the use of English law or, indeed, English law generally. It is more a case of where Scots law is not doing the job, it is up to Scottish lawyers, the Scottish Parliament and the Scottish courts, where possible, to do something about that. If one leaves a law in a state that means that nobody uses it, there is something amiss. Our attitude to such matters is just part of the mechanics of society, if you like. People will remain free to use English law if they prefer it, and they might do so. However, it is a pity if the legal system is not working for those who work in it."—[*Official Report, Delegated Powers and Law Reform Committee*, 14 March 2017; c 11.]

That captures exceptionally well the principles and the practical aims that underpin the bill.

At the same time, there has been a dose of realism about the bill's implementation. As we have heard, the experience in England and Wales suggests that it takes time for such legislation to be adopted. It is therefore perhaps to be expected that the bill's provisions will not necessarily be immediately adopted by the legal profession in Scotland. In fact, we heard that, although legislation on third-party rights has been in place in England and Wales for some time through the Contracts (Rights of Third Parties) Act 1999, there has only recently been an uptake in the use of the act, and even then it appears that, in most cases—in the construction sector, for example—people continue to rely on collateral warranties.

However, witnesses including the Law Society of Scotland and the Royal Incorporation of Architects in Scotland have suggested that the

benefits offered by the bill may encourage legal practitioners and their clients to use newly codified legislation. Of course, we in Scotland are not beginning from a standing start.

In terms of fairness and equal access, Dr Ross Anderson of the Faculty of Advocates suggested that the bill might benefit people who do not have the resources to access expensive legal advice. He said:

"One of the great advantages of the bill is that it sets out, in modern language, what the law actually is."—[*Official Report, Delegated Powers and Law Reform Committee*, 21 March 2017; c 8.]

We also heard that the use of collateral warranties can be costly, so the bill will have practical benefits in that regard.

I did not think that I would have more to say than the time allows, but I am being encouraged to wrap up by the Presiding Officer.

The bill will be a useful tool for legal practitioners and their clients. No one expects a rapid uptake of the legislation in the short term, but it is important for the reputation of Scots law that it does a good job. I welcome the general principles of the bill.

The Deputy Presiding Officer (Linda Fabiani): This has obviously been a fascinating debate, because we are now over time. I ask the remaining speakers to be a bit more disciplined, please, with speeches of up to six minutes.

15:35

John Mason (Glasgow Shettleston) (SNP): I had the privilege of being a member of the DPLR Committee in the previous parliamentary session. I told the whips last May, though, when I was re-elected to Parliament, that I did not want ever to be on it again. However, I accept that one attraction of the committee is its compact size—five members. Other committees that I am on have 11 members and are unwieldy.

I commend the committee for holding five evidence sessions and reassuring me that they have carried out their work very diligently, as always. I believe that Parliament can rely on the committee with regard to the bill; many of us in Parliament probably need to rely on the committee, because the bill deals with a technical area with which most of us are not familiar.

It was good to see the comment by James Rust of Morton Fraser LLP, who said that change in the area that the bill deals with had not been made in the past because of lack of parliamentary time, but now that we have the Scottish Parliament,

"the dam has burst and we have got on with it."—[*Official Report, Delegated Powers and Law Reform Committee*, 28 March 2017; c 37.]

Specifically having the DPLR Committee to handle this type of legislation is clearly good. I note the recommendation at paragraph 40 of the report that

“more than one area of law reform at the same time”

might be considered. I certainly agree that it is worth exploring that, as long as lay members of the committee, which I was, do not get too confused by dealing with different issues at the same time. I note that the minister will consider the recommendation further.

The process of recommendations from the Scottish Law Commission leading to SLC bills is one that seems to be settling down well. I was a member of the committee when it considered the previous such bill—the Bankruptcy (Scotland) Bill. It is easier to speak on bills that deal with such subjects when one has been a member of the DPLR Committee. I was not a member of the committee when it dealt with the Legal Writings (Counterparts and Delivery) (Scotland) Bill, but I ended up speaking on it in the chamber, which was—as others have said—a bit of a challenge.

As I understand it, the DPLR Committee can consider only non-contentious bills, but I feel that we could relax that stipulation a bit and let the committee consider a slightly wider range of legislation. This is the second SLC bill dealing with contract law, with the Legal Writings (Counterparts and Delivery) (Scotland) Bill being the first. If I remember correctly, the purpose of that bill was to make it easier to sign contracts without all signatories being in the same place or having one piece of paper physically travel round all the signers.

On the bill that is before us, I am particularly attracted by the comment by the SLC, which said that it supports the policy to

“make arbitration in Scotland and under Scots law as attractive as possible to potential users from elsewhere as well as those already in the jurisdiction.”

That comment is to be welcomed. The fact is that we live in a competitive world and we want to win business for our legal system, just as we do for other sectors of our culture and economy. Scots law has long been distinct from law elsewhere; we want to harness that distinctiveness for our benefit. That is not to say that we want to make our system as cheap as possible or otherwise encourage a race to the bottom, as the saying goes. However, we want our law to be simple and straightforward, and if that requires moving from common law to statute, so be it.

I felt that the SLC submission put it clearly that case law can have the advantage of being more flexible but the downside of that is less certainty, which might put people off entering a contract at all or, at least, entering a contract under Scots law.

I liked the comment by David Christie, to which others have referred, that uncertainty is effectively a “death spiral” that means a lack of case law, leading to the law not being developed.

However, in the specific case of third-party rights, it is actually the lack of flexibility in revising or amending a contract that is one of the key problems. Normally, a contract can be revised or amended by agreement, but the present situation makes that more difficult if a third party is involved. We have heard reference to the House of Lords judgment that enforced that inflexibility.

The report deals with the issue that increasing flexibility for the parties to a contract—that is, removing irrevocability—could reduce the rights of third parties. That is dealt with in paragraphs 62 to 73. However, the committee concluded at paragraph 74 that it supports abolition of the irrevocability rule and that sufficient protections have been provided.

I see from its report that the DPLR Committee has raised a number of issues with the minister. She agreed to consider them and has recently responded. The tone of that response seems to be very constructive, so I look forward to seeing what amendments might be lodged at stage 2.

However, today we are at stage 1 and we are considering the principles of the bill. I see that the committee spent some time on the question whether the bill will be used much in practice. That was a worthwhile question to ask. There is little point in our passing legislation for the sake of it or for the sake of appeasing Parliament’s detractors who measure our success by the number of bills that we pass.

The general feeling among witnesses seems to be that the bill will not have an immediate and dramatic impact, and nor will its provisions be widely used in the short term. However, it certainly moves us in the right direction. I note the comment of Professor Vogenauer—I am not sure whether I have pronounced that correctly—about which legal system provides the “law of choice”. I guess that in the longer term, many of us would want Scotland to be a small and flexible nation to which organisations and individuals might be attracted to do their business because of the legal and economic benefits.

I am always interested in the financial aspects of a bill, but I see that there were no responses at all to the Finance Committee’s call for evidence. That is reassuring.

I am happy to add my support for the bill, and I trust that members will allow it to proceed at decision time.

15:41

Mike Rumbles (North East Scotland) (LD): Being the 10th speaker in this debate is something of a challenge, even for me. [*Laughter.*] I will not take an intervention just yet. Everyone is agreeing and making largely the same points—but here goes.

I contrast this debate with the debate earlier in the week on the Seat Belts on School Transport (Scotland) Bill at stage 1. That bill was unanimously supported, as this bill will be, but in that debate major contentious issues were discussed. It was argued that the bill could be improved, and there was an effective exchange of ideas in the chamber. Today, everybody is agreeing with me.

That was meant to be a joke, but it fell flat. There we are. If you are a Liberal Democrat, it is not usual to have everybody in the chamber agreeing with you. I am glad that everybody is agreeing with me. I notice that the Greens are not here—I would like to have included them in that remark.

For the Liberal Democrats, I start as other members have done by thanking the Delegated Powers and Law Reform Committee and Parliament staff for their work to date on this relatively small but important bill. I acknowledge all those who have given evidence to the committee—in particular, the Scottish Law Commission, the deliberations and recommendations of which have given rise to this welcome and much-needed codification of third-party rights in contracts. As the committee makes clear in its report and as members across the chamber have highlighted, the bill commands unanimous support among stakeholders.

To ease proceedings, I will stick to about three minutes, Presiding Officer. I have just removed the next two and half pages of my speech.

Members: Hear, hear.

Mike Rumbles: There we are: “Hear, hear.”

Notwithstanding the benefits that the bill is expected to deliver, all the evidence suggests that there is unlikely to be an immediate impact should the bill be passed. In the short term, take-up and use of the new law is unlikely to be high. Over time, however, there is every reason to expect that the newly created certainty and flexibility should prove attractive and encourage greater use of the law in the future. On that point, it would be helpful to know whether the minister believes that steps can be taken to raise awareness or perhaps even encourage take-up. Has that been discussed with the Law Society, for example, and, if so, can the minister update Parliament on the outcome of those discussions? Indeed, are there particular

circumstances in which the change in the law may be expected to have a more immediate impact or where the advantages of the bill are likely to be most significantly felt?

Rare is the bill that reaches stage 1 without identification of the need for some form of amendment. I note that the committee has helpfully identified a number of areas in which the bill’s language would benefit from being tightened up. I welcome the fact that ministers have accepted the case that the committee has made about the need to tighten up the language and that work on that is already under way. That is very helpful and should ensure that, in due course, Parliament is able to pass a bill that will deliver the certainty and flexibility that are needed, so that contract law in Scotland around third-party rights is fit for purpose.

I have failed by 12 seconds to stick to three minutes.

15:45

Rona Mackay (Strathkelvin and Bearsden) (SNP): As a member of the Justice Committee, I care deeply about access to justice and about demystifying the legal process so that it is better understood by the layperson. That is why I am happy to support the general principles of the Contract (Third Party Rights) (Scotland) Bill and the stage 1 report on it. The bill replaces the current law, which is causing uncertainty and confusion; in short, it is past its sell-by date. The proposed changes are based on recommendations by the Scottish Law Commission, which found that the existing law is no longer fit for purpose.

The bill provides a new statutory framework that incorporates clearer, more user-friendly rules on third-party rights. As we have heard, those rights can be of use in a wide range of both personal and commercial situations—for example, insurance contracts, company contracts, construction contracts and, last but not least, employers’ pension schemes, which might allow a third party to be nominated as the beneficiary if the employee dies while still in employment.

The difficulties with the current law include confusion over whether third parties have a right to claim damages for breach of a third-party right, and time limits for bringing claims under the current law are also unclear. The general rule is that most claims can no longer be made five years after the day on which loss, injury or damage first occurred. However, the Prescription and Limitation (Scotland) Act 1973 does not even mention third-party rights.

In addition, the rule of irrevocability is too inflexible. We know that, under Scots law, third-

party rights have to be irrevocable, but there is uncertainty as to what that actually means. The SLC believes that the need for irrevocability is one of the main problems with the current law.

Scottish arbitration legislation under the Arbitration (Scotland) Act 2010 does not deal expressly with third-party rights, unlike legislation in England and Wales and some other countries, where the law enables third-party disputes, under certain circumstances, to be dealt with by arbitration.

It is clear that the law needs a new statutory framework, and that is why the bill has been universally welcomed by stakeholders such as the Royal Incorporation of Architects in Scotland, which says that it will clear up

“areas of ambiguity and doubt”.

The Law Society of Scotland states:

“The law on this issue is outdated compared to the approach of other modern legal systems”.

I note that the Delegated Powers and Law Reform Committee has raised concerns about the drafting of some provisions in the bill, and I am pleased that the Scottish Government will reflect on their clarity and usability, because that is, after all, the main purpose of the new statutory framework.

The good news is that the bill is not expected to result in any great costs and there is an argument that, in time, it could provide some savings to businesses and the legal profession.

I stated at the outset that I applaud anything that brings clarification to legal matters and enhances access to justice. For that reason, I am happy to support the general principles of the Contract (Third Party Rights) (Scotland) Bill and recommend it to the Parliament today.

15:48

Gordon Lindhurst (Lothian) (Con): Who can say that Scottish law is not interesting after the contributions that we have had on this matter here today? I must say that, as a member of the Faculty of Advocates and a long-time student of the law—details are in my entry in the register of interests, to which I make reference in passing—the concept of “uptake” of a new law seems to be rather less than traditional Scots legal parlance. “Jus quaesitum tertio” rolls off the tongue more readily than the thought of someone going into the supermarket of law and choosing a nice juicy law such as the Contracts (Third Party Rights) (Scotland) Act 2017. That may come more easily to parliamentarians such as us.

It is, however, right to consider the background to where we find ourselves today. The case of

Carmichael v Carmichael’s executrix, which was reported in the 1920 volume of *Session Cases* at page 195 of the House of Lords reports, is seen as one touchstone of the current common law in Scotland on third-party rights. It is instructive to consider that the case was decided almost 100 years ago and that it arose out of events that took place more than a century since. I think that it is helpful to think briefly about the individuals in that case, because to do so brings us face to face with the reality of what most, if not all, law is about—fellow human beings like ourselves.

No doubt, Mr Hugh Fletcher Carmichael did not think that he would be making legal history when he accepted that proposal for insurance on 21 October 1903, and nor is it likely that he wished to ever see the policy that was taken out on the life of his son, Ian Carmichael, encashed on his son’s death. For many years, he paid the annual premium of 9 pounds, 10 shillings—but no pence—in

“lawful money of Great Britain”,

to use the words of the policy. His son, Ian, joined the new and fledgling air force during the first world war and tragically died in an air accident in the summer of 1916. Ian had left a will in favour of his aunt, Miss McColl, as his executrix. His father, however, had kept and retained the policy in his possession. Sadly, there followed a dispute between Mr Carmichael and Miss McColl about who was entitled to have the proceeds paid out to them. Out of that dispute arose the case of *Carmichael v Carmichael’s executrix*, which was eventually decided in the House of Lords in favour of Miss McColl.

I have outlined the background of the case and the individuals who were involved simply to bring to life the bill that we are debating. Among the dusty legal furniture of bills, sections and subsections, we need to remember that what we are dealing with is and will be important in the lives of the people of Scotland. That is one reason why it is important to have legal clarity, which is one of the driving purposes behind the bill.

With that in mind, and mindful that others have already made reference to the background, I would like to raise a number of points on drafting clarity in the bill. Most of them have already been presaged in the evidence before the Delegated Powers and Law Reform Committee and set out in its report. I note the letter from the minister to my colleague John Scott, as convener of the DPLR Committee, setting out the Scottish Government’s position on those matters, and I thank her for that. Notwithstanding that response, I will mention three matters in the hope that further thought might be given to them.

The first is the suggestion that was made in evidence to the committee that sections 1 and 2 could conveniently be made into a single section. That is not a bad idea, but I have a particular concern with section 2(1), which states that section 2

“makes provision elaborating on section 1”.

It is unclear to me why that is thought to be at all necessary, since the normal statutory practice—as indeed is done elsewhere in section 2—is simply to refer to the particular subsection that it is intended to modify. If one couples section 2(1) with section 2(7)—I can see people’s eyes glazing over as I go into the detail of this—the application of the normal rules of statutory interpretation may lead to undesired results. At best, section 2(1) appears unnecessary and superfluous but, at worst, and as is likely, it will be a source of difficulty that may result in litigation.

Secondly, sections 5 and 6 appear to depart from the normal mode of statutory drafting by putting a definitional subsection first followed by the subsection that it is meant to define and clarify. Contrast that with the immediately preceding section 4, which follows the usual order of a subsection that sets out a proposition and then a further definitional subsection. To a lawyer’s eye—at least mine—the approach in sections 5 and 6 looks like writing backwards. Although it may not alter the effect of the sections, it makes reading them awkward for the practitioner.

The third and final issue—here I commend the drafting of the bill rather than criticise it—is on section 10(1). My comment here is not meant as a criticism of the minister, because my understanding is that she has listened to and taken on board comment that section 10(1) is unneeded. However, my comment is that, in a bill that is meant to define and bring clarity to third-party rights and place them on a statutory footing, it is in fact probably helpful to have the definition that is contained in section 10(1). I simply raise that as another point.

For what they are worth, those are my humble comments on the bill at this stage.

15:54

Emma Harper (South Scotland) (SNP): I am pleased to speak in the debate, and I take the opportunity to thank the five members of the Delegated Powers and Law Reform Committee—John Scott, Stuart McMillan, Alison Harris, Monica Lennon and David Torrance—for their work. As is customary, as well as warranted, I thank the committee clerks who were involved in drawing together the report and everyone who gave evidence to the committee.

When I was elected, I was advised to participate in debates on subjects that I am not familiar with. That advice, which came from George Adam, the MSP for Paisley, was good. I see that he is back in the chamber. Having listened to the minister’s opening speech and members’ speeches, I am already better prepared to explain some aspects of the law on third-party rights, and I look forward to supporting South Scotland constituents if the issue affects them.

Since coming to Parliament, I have attended many committee meetings, cross-party group meetings and events. Although my background is in healthcare, I have had to engage with many subject areas and learn a new language in order to assess and process information that is presented to me. I have adopted terms such as “Scottish statutory instruments”, “affirmative and negative instruments”, “process of annulment” and now—thanks to the Delegated Powers and Law Reform Committee—“collateral warranties”.

Learning about the various processes that are involved in running our country and developing knowledge in a range of areas and portfolios is something that I enjoy about an MSP’s job. Yesterday, I stumbled on colleagues having a conversation in the corridor about today’s debate. Although I am no expert on the law, I was interested to hear about the importance of the bill in bringing an area of Scots law into line with what happens internationally. Some reasons why the bill is important have been mentioned.

My goal today is to speak about the Scottish Law Commission’s report and convey to South Scotland constituents how the bill will positively affect them. I looked first for a definition of a third party. In simple and generic terms, a third party is any individual who does not have a direct connection with a legal transaction but who might be affected by it.

In 2014, the Scottish Law Commission examined Scots law on third-party rights and compared it with international benchmarks. The commission’s report, which was published last year, concluded that the existing law needed to be replaced. Its concerns were about a lack of clarity and inflexibility in the current law. The Law Society of Scotland highlighted that uncertainty and noted that lawyers do not like to give advice in areas where the law is unclear.

Scots law on third-party rights dates from a House of Lords decision in 1920, in the case of *Carmichael v Carmichael’s executrix*. Gordon Lindhurst described that case eloquently—if I had to repeat what he said, I would probably have to stop speaking after one minute.

In that case, the judges decided that it is not enough for contracting parties to convey an

intention for a third party to have a right by saying so in their contract and stated that they must take additional formal steps to make that provision irrevocable. To establish the right under the current law, the contract must identify the third party; show an intention on the part of the contracting parties to confer a benefit; and provide a benefit that is unalterable and irrevocable. The current situation in Scotland is unfortunate, as contracts in favour of third parties are of great economic importance, particularly with regard to life insurance and contracts of annuity.

I understand that a further issue concerns the inability of groups of companies to rely on third-party rights to deal with group loss. That problem arises when a company operates using a complex group structure and suffers loss when problems are caused by a supplier's failure to provide a particular service. In the absence of a clearly defined third-party right, the supplier can state by way of defence that it was contracting only with one member of the group. As a result of those complexities, the Scottish Law Commission found that legal practitioners and their clients are relying on English instead of Scots law in relation to third-party rights, as has been mentioned.

In evidence sessions, the committee was told that there has been an awareness of the problems that were created by the 1920 judgment since the period after the second world war. However, Professor Beale of the University of Warwick told the committee that there had been an equally long period between the identification of the problem and its resolution in England and Wales.

The bill was supported universally during the committee's evidence sessions. It will implement the Scottish Law Commission's recommendations and reform the common law on third-party rights.

Earlier, I thanked the witnesses for the evidence that they provided. I am aware that the minister, Annabelle Ewing, was extremely knowledgeable about the complexities of third-party law when giving evidence to committee. It is welcome news that our minister is well informed in her portfolio.

The bill has been welcomed by stakeholders including the Law Society of Scotland and the Royal Incorporation of Architects in Scotland. Third parties will benefit from the bill because how a third party may enforce his or her right will become clearer. For example, as has been mentioned, if a mother books a holiday for her spouse and her children and the holiday fails to deliver on promises that were made in the contract, the mother can claim damages for her disappointment, but her spouse and each child will also be able to claim, as third parties with rights under the contract.

16:00

Mary Fee (West Scotland) (Lab): In closing for Scottish Labour, I thank everyone for taking part in the debate. It is clear that we all agree that the bill makes a necessary change to our legal system that will benefit all parties that enter into contracts. I thank the Scottish Law Commission for undertaking the work and producing the resulting bill, and I thank the Delegated Powers and Law Reform Committee for producing an informative stage 1 report.

To ensure that our legal system is fair, balanced and just, Scottish Labour supports the changes that the Scottish Law Commission has proposed. By replacing the common-law third-party rights system with a statutory version, we can end the uncertainty and inflexibility of the current system. The committee report informs us that the bill is universally supported and welcomed by all stakeholders.

The lack of speed in law reform is not a new issue to politicians or to those in the legal profession, and the proposed changes to third-party rights in Scotland are not unique in their lack of progress to reform the law. Nearly a century after the House of Lords judgment in *Carmichael v Carmichael's executrix*, it is right that we make the necessary changes soon. I was surprised to read the evidence from Professor Beale of the University of Warwick. He highlighted that, in England and Wales, the work to change third-party rights started in 1937, but legislation was produced only in 1999.

On the bill's general principles, the creation of legal certainty and flexibility is an important and crucial benefit of replacing the common law with a statutory approach. The committee reports that

"the common law position is unsustainable as case law is unlikely to develop fast enough to deal with the problems identified".

That view was shared by those who provided evidence.

On creating legal certainty, we read that David Christie of the Robert Gordon University described the current system as a "death spiral". Those are strong words. Lawyers are by nature risk-averse creatures, and they have to be for obvious reasons. Businesses, investors and public bodies also fear uncertainty. We only have to consider the constitutional quagmire that grips the UK to know that. We read that, as a result of the uncertainty, lawyers are resorting to other jurisdictions for certainty. David Christie rightly referred to the bill as rebooting the common law.

I turn to the members who have spoken in the debate. They have illustrated the benefits that the bill will bring in areas such as insurance and finance. In her opening remarks, the minister

spoke of the need for legislation that is “fit for purpose”. Ben Macpherson also referred to that.

Monica Lennon spoke about the savings that the bill may bring, which the Law Commission and the Royal Incorporation of Architects highlighted in evidence. Claire Baker spoke about the need for clarity and the uncertainty that exists, while highlighting the need to protect third parties. John Mason touched on the need to make arbitration more attractive. As one of the closing speakers in the debate, I whole-heartedly support Murdo Fraser’s opening remarks.

To return to the bill, the flexibility that it will bring is a key benefit that addresses an issue that has been raised by several members, including Stuart McMillan and Alison Harris. The abolition of the irrevocability rule is welcome in order to make it easier to create and remove third-party rights in contracts. The committee’s report and the bill’s explanatory notes give details about the inflexibility under the current common-law approach.

The Law Society of Scotland and the Faculty of Advocates support the abolition of the irrevocability rule. In supporting the abolition and welcoming increased flexibility, Kenneth Rose, a partner in CMS Cameron McKenna, said that the required flexibility

“would make our legal system more attractive and more user-friendly for individual parties.”—[*Official Report, Delegated Powers and Law Reform Committee*, 21 March 2017; c 20.]

It is right that we abolish the rule, to ensure the required protections and balances for third parties that are affected by contracts.

I recently criticised the Scottish Government during the stage 1 debate on the Railway Policing (Scotland) Bill for trying to fix something that was not broken. Here is an area of law that is broken and must be fixed. The Contract (Third Party Rights) (Scotland) Bill might not be on an issue that is as important to the public as policing is, but the bill is necessary for our businesses, investors, public bodies and any other users of Scots law to ensure legal certainty in contracts, and we in Scottish Labour are happy to support the principles of the bill.

The Deputy Presiding Officer: I call Adam Tomkins. Strangely enough, we now have time in hand, so you may have a generous seven minutes, but not too generous.

16:06

Adam Tomkins (Glasgow) (Con): When Murdo Fraser and I contracted with our whip not to have to speak in James Dornan’s earlier members’ debate on the Lisbon Lions, we had little idea that we would have to sign a collateral

warranty to appear in this debate instead. As Rangers fans—that is, supporters of Scotland’s most successful club—it was nice to listen earlier today to memories of Celtic’s historic achievements.

My law school colleagues past and present would be both appalled and alarmed to know that I was speaking in a debate about the law of contract. Not only was the law of contract my worst paper at university, but I had the misfortune to study the English law of contract, not Scots law. The minister, Annabelle Ewing, referred to there being “eminent jurists” in the chamber this afternoon. I do not know whom she was referring to: I am sure that she was not referring to me because I am certainly not an eminent jurist in the law of contract. Constitutional law is my field.

There are some overlaps between contract law and constitutional law, and I was reminded of the great work by Sir Henry Maine, “Ancient Law”. The principal argument in that great work is that, over the centuries, law moved from status to contract and from a hierarchical order to a voluntary compact. Stanley Baldwin, the great interwar Conservative Prime Minister, said that Henry Maine had been his most influential tutor, although he confessed that he could not quite remember whether Maine’s argument had been that law had moved from status to contract or the other way round. It just goes to show, I suppose, that one can be a successful political leader without paying any attention in one’s law lectures.

Contracts allow people and companies to create rights and duties that can be enforced in court. In general, those rights and duties are enforceable only between parties to the contract, and no right or obligation can be created in respect of someone who is a stranger to the contract and is termed a “third party”. In some legal systems, the rule is strictly enforced. In Scots law, by contrast, it has long been recognised that, in certain limited circumstances, a contract can contain enforceable rights in favour of a third party. We have heard in numerous contributions, including that from the minister, how those third-party rights can be used in a wide range of personal and commercial situations, including in insurance contracts, in contracts involving company groups, in construction contracts, which Ben Macpherson and others mentioned, and in pensions law.

The current common law is widely criticised in Scotland, not least because of the rule of irrevocability, which insists that the third-party right, to be enforceable, must be clear to the third party from such circumstances as delivery or intimation or equivalent, and that the parties to the contract intended to give up the right to change their minds about granting the third-party right.

Brodies LLP, one of Scotland's leading law firms, said in evidence to the Delegated Powers and Law Reform Committee that Scots law in this area is

"stuck in the 17th century",

which is an odd thing to say about an area of law that really dates from a case that was decided in 1920. However, it is widely regarded as being historical, inflexible and not fit for purpose. The irrevocability rule is, as I have said, particularly controversial and, as we have heard, representatives of the Law Society of Scotland and the Faculty of Advocates have welcomed the bill and its proposed removal of that rule.

It has been difficult to find very much politics in the bill, which is probably a good thing. However, I want to make one point that the minister might or might not wish to respond to when she winds up. It is very important for Scots law to retain its market competitiveness; there is competition in legal systems, and we have heard numerous members this afternoon talk about how Scots lawyers currently draft contracts that are enforceable under English law—in other words, in the English courts—rather than under Scots law, because of the antiquated nature of our rules on third-party contracts.

We have also heard how this area of law changed in England as long ago as 1999, and we are changing it in Scotland only now. I know that we are doing so because the Scottish Law Commission reported on it only relatively recently, but my question to the minister is this: if there are other areas of Scots law in which we are losing our market edge or our competitiveness because the statute book has not been kept up to date and the common law is falling behind, is it part of the Government's thinking to encourage the Scottish Law Commission to identify such areas at an early opportunity and report on them so that we can update Scots law and ensure that it is able to compete effectively with other legal systems in Europe and, indeed, the United Kingdom? It seems odd that we are only now dealing with a problem that was created by a House of Lords judgment of nearly a century ago. I know that the law does not always move very quickly, but this seems to be particularly slow.

As Stuart McMillan and others pointed out in their speeches, the bill is an exercise in codification of an aspect of Scots contract law. That puts me in mind of the very first essay that I wrote as a very young law student a number of years ago. The subject that I was studying in the first year of my law degree was comparative legal systems, and my tutor asked me to write an essay comparing the strengths and limitations of codification as a means of law reform. No copy remains of the essay—

Murdo Fraser: Shame!

Adam Tomkins: No—I am glad to say that no copy of that rather tiresome essay remains, but I remember that I took the French civil code as an example of what not to do when using codification as a means of legal reform. The first half of the essay was a series of arguments against codification; I started the second half with the phrase, "However, to be fair to be French" and then wrote about why we should codify things. However, my tutor took exception to that opening phrase; he underlined it and wrote in the margin, "Arrest this unhealthy tendency. Never be fair to the French"—the only bit of advice that I remember getting from that law tutor.

In closing, I want to make two quick comments about specific aspects of the bill that the Delegated Powers and Law Reform Committee has referred to and to which the minister responded in her letter, which I saw for the first time earlier this afternoon. I urge her to pause and think again about these issues, given the strength of the concerns that have been reported by the committee.

The first point is about the use of the word "undertaking" in section 1, which seems from the evidence that the committee has marshalled to be ripe for wholly unnecessary litigation. It might be worth taking another look to ensure that the word is being used appropriately and has been defined as carefully and as specifically as possible.

Secondly, with regard to the committee's comments on sections 4 to 6, which have already been mentioned this afternoon, I note that the Faculty of Advocates was quite strong in its evidence that the provisions are not drafted appropriately. That view is shared by the Law Society of Scotland. Craig Connal said that he could see litigation written all over the provisions, and Professor Hugh Beale, who wrote the book on the law of contract from which I studied at university many years ago, said that the provisions are hard to understand—although so was his book. I urge the minister, gently and respectfully, to reconsider whether the provisions have been appropriately drafted. I know that she said in her letter to the committee yesterday that she is satisfied "On balance" that the bill is satisfactorily drafted, but I think that the issues merit further consideration.

The Deputy Presiding Officer: Mr Tomkins, I have taken advice and we reckon that that was a B+.

Adam Tomkins: A very generous mark, Presiding Officer.

16:15

Annabelle Ewing: I thank members for their speeches in what has been a worthwhile debate. There were important contributions from across the chamber, from lawyers—eminent or otherwise—and non-lawyers alike. I thank everyone for their consideration of the important issues that are the subject of this debate.

I am pleased that members share the aim of reforming the law in the area and that there is support across the chamber for the general principles of the bill. A clear, positive and readily accessible statement of law, in a short statute, will improve the standing and value of Scots law. Contracting parties to a contract and those who are provided with third-party rights in a contract should all benefit from the law being clearer, up to date and more flexible.

Where a third party has rights under a contract as a result of the bill, they will be able to take full advantage of the legal remedies for any breach of contract that will be available to a party to that contract, where they are undertaking in favour of that party. Also, the defences on the part of the contracting parties will be available in the context of any claims from the third party, to the extent that they are relevant—that is an important issue, although it was not much touched on in the debate.

I listened with interest to what members said and I will reflect on all the points that were made, including Gordon Lindhurst's technical points and Adam Tomkins's point about the meaning of "undertaking" in section 1.

In the time available, I will try to respond to at least some of the other points that members made. On the pace of law reform in general, Murdo Fraser and Mary Fee mentioned the 1999 act in England and Wales. As we see from the committee's report, discussions on the matter first started in 1937. It is important to recall that the legislation in England and Wales introduced third-party rights into the law for the first time, because of course in that jurisdiction people had proceeded on the basis of privity of contract. Therefore, we cannot make a direct comparison with what has been going on in Scotland, where third-party rights have been in existence for centuries. I think that the earliest case on record is the *Moncur* case, which dates from the 1590s—perhaps Mr Tomkins's B+ would have been higher if he had made reference to it. Scotland has had the common law of third-party rights for centuries.

However, particular problems developed with regard to certainty and flexibility around 100 years ago, with the seminal case of *Carmichael v Carmichael's Executrix*, to which many members referred—members are becoming quite relaxed

about citing seminal legal cases, which I think is a positive development. We heard an eloquent overview of the facts of *Carmichael v Carmichael's Executrix* from Gordon Lindhurst. Problems started to develop as a feature of that case, but it is not fair to say that there has been an on-going focus on third-party rights since the case, because it is only recently, as society and commerce and industry have developed, that the problems have been felt more acutely. It is important to place the issue in context.

Of course, we recognise that the 1920 case caused a lot of problems, which is why we are engaged in this important work to bring our law into the 21st century and fix the problems that have been identified. That is what the bill is designed to do.

More widely in the area of law reform, it is important not to react to particular decisions and developments overnight, because a one-off decision by a court can often be quickly overturned. In many instances, the law is capable of keeping itself in good order. However, that has not proven to be the case with regard to the importance of third-party rights in Scots law. At the same time, it is important to note that the law is often complex and needs careful thought and consideration. I agree with Stuart McMillan that the DPLRC plays an important role in Parliament to progress law reform; in that regard, Adam Tomkins suggested that we may seek to accelerate that process. We have regular meetings with the Scottish Law Commission and I am due to meet Lord Pentland in, I think, September, so that is an issue that we can discuss for the future. Reforms to the civil law of Scotland were a matter for the Westminster Parliament prior to the reconvening of this Parliament. In a crowded agenda, the focus was perhaps not on reforming Scots civil law.

Stuart McMillan asked whether it might be possible, in our approach to law reform via the DPLRC, for the Scottish Law Commission to consider bundling up—to use an ungainly word—what would otherwise be discrete issues. I am happy to take up with Lord Pentland the extent to which that would be possible when we next meet. We are all interested in ensuring that we keep our law up to date.

With regard to how quickly we feel this legislation will be taken up if passed by Parliament, we cannot be definitive. I stress that our starting point here is different from that in England and Wales, where the 1999 legislation introduced third-party rights in England and Wales for the first time. From a commercial perspective, it is clear to members of the legal profession and to those conducting business in Scotland that the law will be a route to save time and money—and legal

fees—which are always attractive options, particularly for business. Therefore, it may be that recourse to the workarounds to which we have referred this afternoon, including collateral warranties, will become less attractive over time.

On the issue raised by Mike Rumbles and others of how to encourage use of the new legislation, reform of this kind often has a momentum of its own. Professor Hector MacQueen of the Scottish Law Commission, who is listening to our deliberations, has spoken at many law conferences about the bill, which I hope has encouraged others to consider making recourse to it once, I hope, it is passed by the Parliament. Members of the Law Society of Scotland and the Faculty of Advocates have also spoken about the role that they can play in raising the profile of the legislation. David Wedderburn of the Royal Incorporation of Architects in Scotland presented evidence to the effect that he would issue practice notes to members alerting them to when the bill will become an act. In my evidence at stage 1 in committee, I said that we will work with business and the legal profession to facilitate take-up and awareness. I will be happy to raise the matter with the Law Society of Scotland in our regular discussions.

I have heard members' comments about sections 4 to 6, and I will reflect on them further. The Government is committed to the principle that legislation should be clear and accessible, and it needs to be effective. I stress that no one who offered evidence suggested that sections 4 to 6 do not produce the right result. All that has been said is that the sections could, perhaps, be drafted differently. While it is always possible to draft provisions differently, there is no immediate consensus among witnesses on what might be a better formulation. I will reflect further, but I remain not entirely persuaded that such changes would be necessary to ensure that the bill is as effective as it can be.

On the question whether there should be dispute resolution mechanisms in the bill—for example, adjudication—I point to the evidence of Hew Dundas, honorary vice-president at the Scottish Arbitration Centre. He concluded by saying:

“In summary, adding adjudication is not necessary and could be confusing.”—[*Official Report, Delegated Powers and Law Reform Committee*, 18 April 2017; c 10.]

We are minded to reflect the position of such an eminent witness, and that was also the conclusion that the committee itself reached.

This has been a comprehensive debate on an important bill and I thank all members for their contributions and their impressive diligence in considering the very technical issues that are raised by the bill. Their diligence is much

appreciated and it has made for a much more interesting debate than some of us had initially foreseen.

I have indicated that I intend to lodge amendments to sections 10 and 12, and that I am still reflecting on the points that were raised on section 9, on arbitration. Although I believe that those might have arisen as a result of a misunderstanding, we will continue discussions with the SLC and the Faculty of Advocates.

With regard to other general points that were raised and that I have not had time to refer to in my winding-up comments, I will look carefully at all the contributions that were made. I look forward to progressing the bill through the next stages in the Parliament.

The Presiding Officer (Ken Macintosh):
Thank you, minister. That concludes the stage 1 debate on the Contract (Third Party Rights) (Scotland) Bill.

Parliamentary Bureau Motions

16:26

The Presiding Officer (Ken Macintosh): The next item of business is consideration of Parliamentary Bureau motion S5M-05776, on the Committee of the Regions.

Motion moved,

That the Parliament endorses the Scottish Government's proposal to nominate, as a representative of the Parliament, Maurice Golden MSP as a full member on the UK delegation to the Committee of the Regions for the remainder of the parliamentary session to 2021.—[*Joe FitzPatrick*]

The Presiding Officer: The next item of business is consideration of Parliamentary Bureau motion S5M-05767, on the approval of a Scottish statutory instrument.

Motion moved,

That the Parliament agrees that the Apologies (Scotland) Act 2016 (Excepted Proceedings) Regulations 2017 [draft] be approved.—[*Joe FitzPatrick*]

The Presiding Officer: I ask any member who wishes to speak against the motion to press their request-to-speak button now.

16:27

Margaret Mitchell (Central Scotland) (Con): The instrument exempts eight health regulatory bodies, as well as the General Teaching Council for Scotland and the Scottish Social Services Council, from the provisions of the Apologies (Scotland) Act 2016.

Section 3 of the act defines an apology and the act itself merely clarifies the current law of evidence in civil proceedings relating to apologies. Quite simply, it has long been recognised by the judiciary that an apology is not good evidence for proving liability or wrongdoing.

By way of background, the origin of the act came from the cross-party group on adult survivors of childhood sexual abuse, and a suggestion from the then chair of the Scottish Human Rights Commission that apology legislation was an effective way to help survivors gain closure.

The Justice Committee is now in receipt of a letter from the current chair of the SHRC expressing concerns about the inclusion of the two non-health-related bodies in the instrument, and the lack of consultation with survivors and survivors' groups. It goes on to state that the historical child abuse action plan review group should have been consulted on the provisions of the SSI.

Although the SHRC recognises that the eight professional health regulatory bodies are exempted in the SSI only in response to the Scottish Government's health legislation on the duty of candour, it agrees with the Law Society's assessment that, in general, an apology is not a reliable indicator of wrongdoing, and particularly as defined by section 3 of the act. Furthermore, it questions the necessity for regulatory bodies to be able to consider apologies.

Therefore, the SHRC offers the solution that the GTC and SSSC should consider ways in which their processes could be adjusted to allow them to work within the Apologies (Scotland) Act 2016 without the exemption, and that the impact on GTC and SSSC processes should be monitored to assess whether providing an exemption has a detrimental impact on their ability to carry out their role. The SHRC confirms that it is not clear that that will be the case, given the position of other regulatory bodies.

I request that the minister withdraw the SSI with a view to implementing the two suggestions that the SHRC has proposed. The failure to do so would raise serious questions about the effective scrutiny of primary and secondary legislation in the Parliament.

16:30

The Minister for Community Safety and Legal Affairs (Annabelle Ewing): The regulations will do two things in relation to the Apologies (Scotland) Act 2016. They will make a small amendment to the existing exception for inquiries and add an exception for the proceedings of 10 professional regulators. Those are the regulator of the social service workforce and the regulator of teachers in Scotland, as well as eight health professional regulators.

As I explained in the Justice Committee evidence session, it is clear that the Apologies (Scotland) Act 2016 could have negative unintended consequences for those regulators' fitness-to-practise proceedings. In particular, it would impact on their ability to establish facts and make risk assessments and, ultimately, on their ability to protect the public. The exception is about professional regulation; it will not in any way prevent institutions such as schools or local authorities from offering apologies. That key point has been recognised by the Scottish Human Rights Commission in its letter to the Justice Committee, which has already been referred to. I will write to it to set out these points in detail.

The need for the exception was raised by the General Medical Council and the Nursing and Midwifery Council as early as stage 1 of the Apologies (Scotland) Bill, and the Justice

Committee recognised their concerns in its stage 1 report. Continued work revealed that those concerns extended beyond the health regulators. The Scottish Social Services Council and the General Teaching Council for Scotland have made it clear that they share concerns about the impact of the act on their proceedings.

The exception is about the need to protect the coherence of the regulatory processes in order that the organisations can fulfil their mission. The regulators are concerned that, if their professional regulatory proceedings were not excepted, that would impinge on their ability to police their profession and ensure that the public are protected. The proceedings exist to ensure that we all have confidence in those professions. The point is that, in those fitness-to-practise proceedings, an apology can say something important about the suitability of the person who is practising a profession. We know that there are other professions in which an apology is less important and in which apologies do not feature among the evidence that is considered.

As I undertook in the Justice Committee evidence session to ensure happened, my officials have written to other regulators whose proceedings are not included in the exception to explore how they are taking account of the Apologies (Scotland) Act 2016. I have also written to the group of survivors of childhood abuse that raised concerns with the committee about the regulations. I explained to it that excepting those regulators' fitness-to-practise proceedings from the scope of the Apologies (Scotland) Act 2016 will in no way cut across the ability of institutions such as schools and local authorities to make apologies to survivors of childhood abuse. I am pleased that, in its response, that group said that it found the letter very helpful in explaining the matter and the reasoning behind the Scottish Government's approach.

I am grateful to the Justice Committee for its thorough scrutiny of the regulations and for the cross-party agreement to recommend to the Parliament that the regulations be approved.

Decision Time

16:33

The Presiding Officer (Ken Macintosh): There are three questions to be put as a result of today's business. The first question is, that motion S5M-05762, in the name of Annabelle Ewing, on stage 1 of the Contract (Third Party Rights) (Scotland) Bill, be agreed to.

Motion agreed to,

That the Parliament agrees to the general principles of the Contract (Third Party Rights) (Scotland) Bill.

The Presiding Officer: The next question is, that motion S5M-05776, in the name of Joe FitzPatrick, on the Committee of the Regions, be agreed to.

Motion agreed to,

That the Parliament endorses the Scottish Government's proposal to nominate, as a representative of the Parliament, Maurice Golden MSP as a full member on the UK delegation to the Committee of the Regions for the remainder of the parliamentary session to 2021.

The Presiding Officer: The final question is, that motion S5M-05767, in the name of Joe FitzPatrick, on the approval of a Scottish statutory instrument, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For

Adam, George (Paisley) (SNP)
 Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Campbell, Aileen (Clydesdale) (SNP)
 Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
 Cole-Hamilton, Alex (Edinburgh Western) (LD)
 Constance, Angela (Almond Valley) (SNP)
 Denham, Ash (Edinburgh Eastern) (SNP)
 Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
 Dornan, James (Glasgow Cathcart) (SNP)
 Ewing, Annabelle (Cowdenbeath) (SNP)
 Ewing, Fergus (Inverness and Nairn) (SNP)
 Fabiani, Linda (East Kilbride) (SNP)
 Finnie, John (Highlands and Islands) (Green)
 FitzPatrick, Joe (Dundee City West) (SNP)
 Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
 Freeman, Jeane (Carrick, Cumnock and Doon Valley) (SNP)
 Harper, Emma (South Scotland) (SNP)
 Harvie, Patrick (Glasgow) (Green)
 Haughey, Clare (Rutherglen) (SNP)
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
 Hyslop, Fiona (Linlithgow) (SNP)
 Johnstone, Alison (Lothian) (Green)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lyle, Richard (Uddingston and Bellshill) (SNP)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 Mackay, Derek (Renfrewshire North and West) (SNP)
 Mackay, Rona (Strathkelvin and Bearsden) (SNP)
 Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
 Maguire, Ruth (Cunninghame South) (SNP)

Mason, John (Glasgow Shettleston) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 McDonald, Mark (Aberdeen Donside) (SNP)
 McKee, Ivan (Glasgow Provan) (SNP)
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
 McMillan, Stuart (Greenock and Inverclyde) (SNP)
 Neil, Alex (Airdrie and Shotts) (SNP)
 Paterson, Gil (Clydebank and Milngavie) (SNP)
 Robison, Shona (Dundee City East) (SNP)
 Ross, Gail (Caithness, Sutherland and Ross) (SNP)
 Rumbles, Mike (North East Scotland) (LD)
 Ruskell, Mark (Mid Scotland and Fife) (Green)
 Somerville, Shirley-Anne (Dunfermline) (SNP)
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Stewart, Kevin (Aberdeen Central) (SNP)
 Todd, Maree (Highlands and Islands) (SNP)
 Wheelhouse, Paul (South Scotland) (SNP)
 White, Sandra (Glasgow Kelvin) (SNP)
 Wightman, Andy (Lothian) (Green)
 Yousaf, Humza (Glasgow Pollok) (SNP)

Against

Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Balfour, Jeremy (Lothian) (Con)
 Beamish, Claudia (South Scotland) (Lab)
 Bowman, Bill (North East Scotland) (Con)
 Briggs, Miles (Lothian) (Con)
 Burnett, Alexander (Aberdeenshire West) (Con)
 Carson, Finlay (Galloway and West Dumfries) (Con)
 Chapman, Peter (North East Scotland) (Con)
 Corry, Maurice (West Scotland) (Con)
 Fee, Mary (West Scotland) (Lab)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Golden, Maurice (West Scotland) (Con)
 Gray, Iain (East Lothian) (Lab)
 Greene, Jamie (West Scotland) (Con)
 Harris, Alison (Central Scotland) (Con)
 Kerr, Liam (North East Scotland) (Con)
 Lennon, Monica (Central Scotland) (Lab)
 Lindhurst, Gordon (Lothian) (Con)
 Lockhart, Dean (Mid Scotland and Fife) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Mundell, Oliver (Dumfriesshire) (Con)
 Scott, John (Ayr) (Con)
 Stewart, Alexander (Mid Scotland and Fife) (Con)
 Tomkins, Adam (Glasgow) (Con)
 Wells, Annie (Glasgow) (Con)
 Whittle, Brian (South Scotland) (Con)

The Presiding Officer: The result of the division is: For 50, Against 27, Abstentions 0.

Motion agreed to,

That the Parliament agrees that the Apologies (Scotland) Act 2016 (Excepted Proceedings) Regulations 2017 [draft] be approved.

Meeting closed at 16:34.

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