

MEETING OF THE PARLIAMENT

Wednesday 2 September 2009

Session 3

£5.00

© Parliamentary copyright. Scottish Parliamentary Corporate Body 2009.

Applications for reproduction should be made in writing to the Information Policy Team, Office of the Queen's Printer for Scotland, Admail ADM4058, Edinburgh, EH1 1NG, or by email to:
licensing@oqps.gov.uk.

OQPS administers the copyright on behalf of the Scottish Parliament Corporate Body.

Printed and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by
RR Donnelley.

CONTENTS

Wednesday 2 September 2009

SCOTTISH MINISTERS AND LAW OFFICERS
PRESIDING OFFICERS
SCOTTISH PARLIAMENTARY CORPORATE BODY
PARLIAMENTARY BUREAU
COMMITTEE CONVENERS AND DEPUTY CONVENERS

Debates

Col.

TIME FOR REFLECTION	19017
BUSINESS MOTION	19019
<i>Motion moved—[Bruce Crawford]—and agreed to.</i>	
ABDELBASET ALI MOHMED AL-MEGRAHI (DECISION)	19021
<i>Motion moved—[Kenny MacAskill].</i>	
<i>Amendment moved—[Richard Baker].</i>	
<i>Amendment moved—[Bill Aitken].</i>	
<i>Amendment moved—[Robert Brown].</i>	
The Cabinet Secretary for Justice (Kenny MacAskill).....	19022
Richard Baker (North East Scotland) (Lab).....	19028
Bill Aitken (Glasgow) (Con).....	19034
Robert Brown (Glasgow) (LD).....	19037
Michael Matheson (Falkirk West) (SNP).....	19040
Elaine Murray (Dumfries) (Lab).....	19043
Ian McKee (Lothians) (SNP).....	19045
Jack McConnell (Motherwell and Wishaw) (Lab).....	19047
Patrick Harvie (Glasgow) (Green).....	19049
Christine Grahame (South of Scotland) (SNP).....	19051
Michael McMahon (Hamilton North and Bellshill) (Lab).....	19053
David McLetchie (Edinburgh Pentlands) (Con).....	19055
Jim Hume (South of Scotland) (LD).....	19057
Tricia Marwick (Central Fife) (SNP).....	19059
Dr Richard Simpson (Mid Scotland and Fife) (Lab).....	19061
Shirley-Anne Somerville (Lothians) (SNP).....	19063
Mr Frank McAveety (Glasgow Shettleston) (Lab).....	19065
John Lamont (Roxburgh and Berwickshire) (Con).....	19067
Malcolm Chisholm (Edinburgh North and Leith) (Lab).....	19069
Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD).....	19071
Angela Constance (Livingston) (SNP).....	19073
Paul Martin (Glasgow Springburn) (Lab).....	19075
Tavish Scott (Shetland) (LD).....	19077
Annabel Goldie (West of Scotland) (Con).....	19079
Iain Gray (East Lothian) (Lab).....	19081
The First Minister (Alex Salmond).....	19084
DIAGEO (TASK FORCE)	19088
<i>Statement—[John Swinney].</i>	
The Cabinet Secretary for Finance and Sustainable Growth (John Swinney).....	19088
SCHOOLS (CONSULTATION) (SCOTLAND) BILL: STAGE 1	19104
<i>Motion moved—[Fiona Hyslop].</i>	
The Cabinet Secretary for Education and Lifelong Learning (Fiona Hyslop).....	19104
Karen Whitefield (Airdrie and Shotts) (Lab).....	19109
Ken Macintosh (Eastwood) (Lab).....	19112
Elizabeth Smith (Mid Scotland and Fife) (Con).....	19116

Margaret Smith (Edinburgh West) (LD).....	19118
Bob Doris (Glasgow) (SNP).....	19121
Claire Baker (Mid Scotland and Fife) (Lab).....	19124
Aileen Campbell (South of Scotland) (SNP).....	19127
George Foulkes (Lothians) (Lab).....	19129
Christina McKelvie (Central Scotland) (SNP).....	19133
Anne McLaughlin (Glasgow) (SNP).....	19135
Elaine Smith (Coatbridge and Chryston) (Lab).....	19138
Hugh O'Donnell (Central Scotland) (LD).....	19139
Nanette Milne (North East Scotland) (Con).....	19141
Ken Macintosh.....	19144
Fiona Hyslop.....	19147
COMMITTEE OF THE REGIONS AND THE REGIONAL CHAMBER OF THE CONGRESS OF LOCAL AND REGIONAL AUTHORITIES OF THE COUNCIL OF EUROPE (MEMBERSHIP).....	19152
<i>Motion moved—[Bruce Crawford].</i>	
BUSINESS MOTION.....	19153
<i>Motion moved—[Bruce Crawford]—and agreed to.</i>	
DECISION TIME.....	19154
DIAGEO (CAMPAIGN AGAINST CLOSURES).....	19164
<i>Motion debated—[Willie Coffey].</i>	
Willie Coffey (Kilmarnock and Loudoun) (SNP).....	19164
Patricia Ferguson (Glasgow Maryhill) (Lab).....	19166
Kenneth Gibson (Cunninghame North) (SNP).....	19168
David Whitton (Strathkelvin and Bearsden) (Lab).....	19171
Linda Fabiani (Central Scotland) (SNP).....	19172
Gavin Brown (Lothians) (Con).....	19174
Bob Doris (Glasgow) (SNP).....	19175
Cathy Jamieson (Carrick, Cumnock and Doon Valley) (Lab).....	19177
Hugh O'Donnell (Central Scotland) (LD).....	19179
Ted Brocklebank (Mid Scotland and Fife) (Con).....	19179
Tricia Marwick (Central Fife) (SNP).....	19181
Ross Finnie (West of Scotland) (LD).....	19183
Claire Baker (Mid Scotland and Fife) (Lab).....	19184
The Cabinet Secretary for Finance and Sustainable Growth (John Swinney).....	19186

SCOTTISH MINISTERS AND LAW OFFICERS

Office of the First Minister

FIRST MINISTER—Right hon Alex Salmond MSP

MINISTER FOR CULTURE, EXTERNAL AFFAIRS AND THE CONSTITUTION—Michael Russell MSP

MINISTER FOR PARLIAMENTARY BUSINESS—Bruce Crawford MSP

Health and Wellbeing

DEPUTY FIRST MINISTER AND CABINET SECRETARY—Nicola Sturgeon MSP

MINISTER FOR PUBLIC HEALTH AND SPORT—Shona Robison MSP

MINISTER FOR HOUSING AND COMMUNITIES—Alex Neil MSP

Finance and Sustainable Growth

CABINET SECRETARY—John Swinney MSP

MINISTER FOR ENTERPRISE, ENERGY AND TOURISM—Jim Mather MSP

MINISTER FOR TRANSPORT, INFRASTRUCTURE AND CLIMATE CHANGE—Stewart Stevenson MSP

Education and Lifelong Learning

CABINET SECRETARY—Fiona Hyslop MSP

MINISTER FOR SCHOOLS AND SKILLS—Keith Brown MSP

MINISTER FOR CHILDREN AND EARLY YEARS—Adam Ingram MSP

Justice

CABINET SECRETARY—Kenny MacAskill MSP

MINISTER FOR COMMUNITY SAFETY—Fergus Ewing MSP

Rural Affairs and the Environment

CABINET SECRETARY—Richard Lochhead MSP

MINISTER FOR ENVIRONMENT—Roseanna Cunningham MSP

Law Officers

LORD ADVOCATE—Right hon Elish Angiolini QC

SOLICITOR GENERAL FOR SCOTLAND—Frank Mulholland QC

PRESIDING OFFICERS

PRESIDING OFFICER—Alex Fergusson MSP

DEPUTY PRESIDING OFFICERS—Trish Godman MSP, Alasdair Morgan MSP

SCOTTISH PARLIAMENTARY CORPORATE BODY

PRESIDING OFFICER—Alex Fergusson MSP

MEMBERS—Alex Johnstone MSP, Tricia Marwick MSP, Tom McCabe MSP, Mike Pringle MSP

PARLIAMENTARY BUREAU

PRESIDING OFFICER—Alex Fergusson MSP

MEMBERS—Bruce Crawford MSP, David McLetchie MSP, Michael McMahon MSP, Mike Rumbles MSP

COMMITTEE CONVENERS AND DEPUTY CONVENERS

Committee	Convener	Deputy Convener
Economy, Energy and Tourism	Iain Smith	Rob Gibson
Education, Lifelong Learning and Culture	Karen Whitefield	Kenneth Gibson
Equal Opportunities	Margaret Mitchell	Marlyn Glen
European and External Relations	Irene Oldfather	Michael Matheson
Finance	Andrew Welsh	Jackie Baillie
Health and Sport	Christine Grahame	Ross Finnie
Justice	Bill Aitken	Bill Butler
Local Government and Communities	Duncan McNeil	Alasdair Allan
Public Audit	Hugh Henry	Murdo Fraser
Public Petitions	Mr Frank McAveety	John Farquhar Munro
Review of SPCB Supported Bodies	Trish Godman	Jamie Hepburn
Rural Affairs and Environment	Maureen Watt	John Scott
Standards, Procedures and Public		
Appointments	Gil Paterson	Marilyn Livingstone
Subordinate Legislation	Jamie Stone	Ian McKee
Transport, Infrastructure and Climate Change	Patrick Harvie	Cathy Peattie

2 September 2009

Scottish Parliament

Wednesday 2 September 2009

[THE PRESIDING OFFICER *opened the meeting at 09:30*]

Time for Reflection

The Presiding Officer (Alex Fergusson): Good morning. The first item of business is time for reflection, and our time for reflection leader today is the Rev David Cameron.

The Rev David Cameron (Queensferry Parish Church, South Queensferry): Presiding Officer, members of Parliament, friends: what is in a name? Quite a lot, I guess, given that this morning a fair number of folks present might have been a little excited at the prospect of one David Cameron speaking to the Scottish Parliament. For some of you, then, disappointment; for others, perhaps, a blessed relief.

That got me to thinking about the impact and the importance of our name. I guess that I am the last person who needs to remind you good people of how our name tarnished results in our work diminished. This Parliament, though only 10 years old, has made a bit of a name for itself. Today, as you move into its second decade, I would like to draw your attention to the four foundational values that the Parliament aspires to be known for: wisdom, justice, compassion and integrity.

We do not need to have lived too long in this world—nor participated much in the life of this Parliament—to realise that such values are not only hard to achieve but hard to maintain. That is perhaps today's understatement. Thankfully, I believe, help is at hand. As someone once wisely said, "When the outlook is tough, don't forget the uplook." The writer of the ancient biblical proverbs takes us upwards when, in Proverbs chapter 3, verses 1 to 8, he says:

"My friend, do not forget my teaching, but keep my commands in your heart, for they will prolong your life many years and bring you prosperity. Let love and faithfulness never leave you; bind them around your neck, write them on the tablet of your heart. Then you will win favour and a good name in the sight of God and others. Trust in the Lord with all your heart and lean not on your own understanding; in all your ways acknowledge him, and he will make your paths straight."

So, my friends, on this day of new beginnings, let me wish you well in your endeavours. May it be that, with every task that you undertake, you daily discover the guiding hand of the God of wisdom, justice, compassion and integrity, who is—remember—only an upward glance and a call away.

I invite you to pause with me for a few moments of reflection around these significant marks in our life and work together.

Lord, we ask for wisdom—a wisdom above and beyond our human understanding.

Lord, let such wisdom inform and shape our understanding of justice.

May such justice be wrapped in, and bound up with, compassion—all the way through.

Lord, may all who speak, think and write in this influential community do so with a wisdom, justice and compassion consistent with their integrity and the integrity of this Parliament.

Amen.

Business Motion

09:34

The Presiding Officer (Alex Fergusson): The next item of business is consideration of business motion S3M-4754, in the name of Bruce Crawford, on behalf of the Parliamentary Bureau, setting out a business programme.

Motion moved,

That the Parliament agrees the following programme of business—

Wednesday 2 September 2009

9.30 am Time for Reflection

followed by Parliamentary Bureau Motions

followed by Scottish Government Debate: Decision on Abdelbaset Ali Mohamed Al Megrahi

2.00 pm Ministerial Statement: Progress on Diageo Taskforce

followed by Stage 1 Debate: Schools (Consultation) (Scotland) Bill

followed by Membership of the Committee of the Regions and the Regional Chamber of the Congress of Local and Regional Authorities of the Council of Europe

followed by Business Motion

followed by Parliamentary Bureau Motions

5.00 pm Decision Time

followed by Members' Business

Thursday 3 September 2009

9.15 am Parliamentary Bureau Motions

followed by Ministerial Statement: Influenza A (H1N1)

followed by First Minister's Statement: Scottish Government's Programme

followed by Scottish Government Debate: Scottish Government's Programme

11.40 am General Question Time

12 noon First Minister's Question Time

2.15 pm Themed Question Time
Justice and Law Officers;
Rural Affairs and the Environment

2.55 pm Continuation of Scottish Government Debate: Scottish Government's Programme

followed by Parliamentary Bureau Motions

5.00 pm Decision Time

followed by Members' Business

Wednesday 9 September 2009

2.00 pm Time for Reflection

followed by

Parliamentary Bureau Motions

followed by

Public Petitions Committee Debate: Inquiry into Public Petitions Process

followed by

Scottish Government Debate: Dementia Strategy

followed by

Business Motion

followed by

Parliamentary Bureau Motions

5.00 pm

Decision Time

followed by

Members' Business

Thursday 10 September 2009

9.15 am

Parliamentary Bureau Motions

followed by

Scottish Government Debate: Fire and Rescue Framework

11.40 am

General Question Time

12 noon

First Minister's Question Time

2.15 pm

Themed Question Time
Finance and Sustainable Growth

2.55 pm

Finance Committee Debate: Strategic Budget Scrutiny

followed by

Parliamentary Bureau Motions

5.00 pm

Decision Time

followed by

Members' Business

Wednesday 16 September 2009

2.30 pm

Time for Reflection

followed by

Parliamentary Bureau Motions

followed by

Scottish Government Business

followed by

Business Motion

followed by

Parliamentary Bureau Motions

5.00 pm

Decision Time

followed by

Members' Business

Thursday 17 September 2009

9.15 am

Parliamentary Bureau Motions

followed by

Scottish Government Business

11.40 am

General Question Time

12 noon

First Minister's Question Time

2.15 pm

Themed Question Time
Europe, External Affairs and Culture;
Education and Lifelong Learning

2.55 pm

Scottish Government Business

followed by

Parliamentary Bureau Motions

5.00 pm

Decision Time

followed by
Crawford.]

Members' Business—[Bruce

Motion agreed to.

Abdelbaset Ali Mohmed al-Megrahi (Decision)

The Presiding Officer (Alex Fergusson): The next item of business is a debate on motion S3M-4748, in the name of Kenny MacAskill, on the decision on Abdelbaset Ali Mohmed al-Megrahi.

The First Minister (Alex Salmond): On a point of order, Presiding Officer. As I understand it, the motion and amendments for today's debate were lodged at 5 o'clock yesterday evening, which is necessary under our procedures. Since then, there have been some dramatic developments overnight: namely, a claim by the Libyan foreign minister that the Prime Minister and the Foreign Secretary did not want Mr al-Megrahi to die in a Scottish prison. Although that claim was initially disputed by Scottish Labour, it has now been confirmed by Mr Bill Rammell—who was the minister involved—and, in the past few minutes this morning, by the Foreign Secretary. *[Interruption.]*

The Presiding Officer: Order.

The First Minister: As the Parliament's credibility depends to some extent on the credibility of the main Opposition party, is it in order under our procedures to allow the Labour Party to submit a drafting amendment, given that its current position looks totally and absolutely ridiculous?

The Presiding Officer: That is entirely a matter for the Labour Party, from which I have received no request to lodge such an amendment.

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): On a point of order, Presiding Officer. Today's debate is for all members to ask questions of and address issues to the minister who was responsible for making the decision. In his statement last week, the Cabinet Secretary for Justice told the Parliament on several occasions that the decision was his and his alone. When calling members to speak, will you protect the interests of all members of the Parliament by calling to sum up the debate the minister who was responsible for making the decision so that he can address the points that members raise?

The Presiding Officer: Just as the previous point of order was a matter for the Labour Party, that point is a matter for the Government party. It is up to that party who it chooses to sum up the debate. I cannot order that to happen.

Margo MacDonald (Lothians) (Ind): On a point of order, Presiding Officer. The First Minister asked whether it is in order for Labour to submit a drafting amendment at this stage. With the greatest of respect, I think that that is in order.

The Presiding Officer: You are correct that that would be in order, but I have received no such request.

The debate is heavily subscribed and we have already eaten considerably into the time that is available for it. I must insist that members stick rigidly to the time that is allocated to them. I call Kenny MacAskill to speak to and move the motion in his name.

09:37

The Cabinet Secretary for Justice (Kenny MacAskill): On 20 August, I announced the decisions that I had taken in relation to Mr Abdelbaset Ali Mohmed al-Megrahi. On 24 August, I repeated the substance of that announcement for the benefit of Parliament and took questions. I will now offer further detail to the Parliament.

At the time of my statement, given the public interest, I took the unprecedented step of publishing the medical advice on which my decision was based. Yesterday, I published a substantial package of information relating to the lead-up to the ratification of the prisoner transfer agreement, the representations and other material that I took into account in reaching my decisions and the advice that was given to me. It has always been my position to offer as much information as we can. I have also published details of the contact between the Scottish Government and the Libyan Government.

I am grateful to those who have given their approval for material to be released. When third parties have requested that material be redacted, we have complied with that request. This is a sensitive matter, particularly where the families of victims are concerned, so we want to ensure that we do nothing that causes them any further pain. I will publish further material as we secure agreement to do so.

Let me first deal with the issue of prisoner transfer. On 29 May 2007, Tony Blair signed a memorandum of understanding with the Libyan Government. The Scottish Government consistently opposed the PTA, and on 7 June the First Minister made a statement to the Parliament. He expressed his concern that the memorandum of understanding could be interpreted as having implications for the due process of law, and he emphasised that the Scottish Government was determined that decisions on any individual case would continue to be made following the due process of Scots law. The PTA was finalised and signed in November 2008, and it was ratified in April this year. The Libyan Government applied for the transfer of Mr al-Megrahi on 5 May 2009. Despite our previous opposition, I was duty bound

to consider the application, and I did so according to due process.

Richard Baker (North East Scotland) (Lab): Is the reality of the situation not that the transfer request from the Libyan Government could not be agreed to while the Crown appeal against the leniency of Megrahi's sentence was outstanding? Did the cabinet secretary at any point have any indication that that appeal would be dropped?

Kenny MacAskill: No, it was not the case that it was automatically ruled out. It was possible for it to be homologated and for the appeal to be dropped. As Mr Baker is now aware, a note was lodged by the Libyan Government that indicated that it would be prepared to drop matters. Indeed, I received representations from Mr al-Megrahi's lawyers that their interpretation of how the situation could be dealt with was different. However, our view was that the application was properly submitted. The criteria would have to be met, but I was duty bound to consider the application.

I received numerous letters and representations, and I recognised that a decision on transfer would be of personal significance to those whose lives had been affected. On 27 May, I received advice from my officials that proposed a process that would allow representations to be taken into consideration in a fair and appropriate fashion. Accordingly, I met groups and individuals with a relevant interest.

I spoke to the United States Attorney General, Eric Holder, on 26 June. On 1 July, I met the families of victims from the United Kingdom; on 6 July, I met a lady from Spain whose sister was a member of the cabin crew; and on 9 July, I held a videoconference with families from the United States. In addition, on 23 July, I spoke with a family whose relatives died in Lockerbie. With the agreement of the families, I have published the notes of those meetings.

I met Minister Alobidi and the delegation from the Libyan Government on 6 July and again on 10 August.

Robert Brown (Glasgow) (LD): The cabinet secretary mentions the dealings with the Libyan Government. When Mr Salmond wrote to Jack Straw back in June 2007, he indicated that his officials would not be drawn into any engagement with the Libyan authorities that could be seen to compromise the on-going judicial process. How many meetings did Mr MacAskill's officials have with Libyan officials? When did they start? What was their purpose?

Kenny MacAskill: There were a considerable number of meetings with Libyan officials to discuss all relevant factors. The notes of those meetings have been published. I cannot give the member a

precise number off the top of my head, but if he cannot tally it from the information that is available on the internet I will be more than happy to provide it to him. We have provided full details of the relevant information.

As I explained on 20 August, I faced conflicting advice on the extent of any pre-trial agreements about where any sentence should be served. In an effort to establish the true position, my officials wrote to the Foreign and Commonwealth Office on 22 June, and the FCO replied on 3 July. I wrote to the Foreign Secretary on 16 July to seek further clarification. Ivan Lewis, Minister of State at the FCO, replied on 3 August. He indicated that the assurances that had been given to the Libyans were political, not legal.

We did our very best to get to the bottom of the issue, but I still do not know the exact nature of the pre-trial discussions, nor what may have been agreed between the UK and Libyan Governments, or any other Government. However, I am certain of the clear understanding of the American families and the American Government. As I explained, that understanding was a critical factor in my consideration of the application for Mr al-Megrahi to be transferred, and it was on that basis that I rejected it.

Prior to ratification, the prisoner transfer agreement was scrutinised by the Westminster Joint Committee on Human Rights. It was the first PTA that did not require the consent of the prisoner. As a result, Jack Straw gave a commitment that, in cases in which applications are not submitted by the prisoner, the prisoner must be given the opportunity to make representations.

Mike Rumbles (West Aberdeenshire and Kincardine) (LD): Last week, the minister told Parliament that no deal was done with Mr Megrahi about the dropping of his appeal, but papers that he released yesterday show that at his meeting with Mr Megrahi he emphasised that the dropping of the appeal was a necessary precursor to any release. That is what the papers say. Mr Salmond denied that the minister even discussed the matter. Is that not an implied deal?

Kenny MacAskill: No. The representations that I made to Mr al-Megrahi are the same as those that I made to every party—I said that, for a prisoner transfer application to be considered, criteria had to be met. That is what I stated to Mr al-Megrahi in the presence of his solicitor, Mr Tony Kelly. I think that Mr Kelly was quoted as saying on television that it was a factual discussion that some would interpret in the manner that Mr Rumbles has but that most others would see it as reasonable to point out that the criteria of the PTA required there to be no outstanding appeal. Under

the PTA, it was my obligation to make that clear to the party.

Margo MacDonald: The minister was obviously keen that justice should be seen to be done, and he informed Mr al-Megrahi of his rights. Did he also inform him that, under a compassionate release, he would not have to drop his appeal?

Kenny MacAskill: I cannot remember the precise details, but I have published the note of the meeting. I went to see Mr al-Megrahi about the prisoner transfer application. On compassionate release, as with other matters, I indicated that I would consider matters together because I did not see the point in going round all the parties again. As is recorded in the notes taken by civil servants, I stated to Mr al-Megrahi the criteria that had to be met—in particular, article 3(b) of the prisoner transfer agreement. Beyond that, I listened to his submissions and received a written note of them, which I have published. No further matters beyond that were discussed. He had the benefit of having his solicitor present. The discussions were on the PTA.

Iain Gray (East Lothian) (Lab): Will the cabinet secretary give way?

Kenny MacAskill: I must make some progress.

During the process, all parties were given the opportunity to make representations directly to me. Mr al-Megrahi chose to make representations in person, just as other parties did. The families of victims and the US, UK and Libyan Governments all made their representations directly to me. When Mr al-Megrahi chose to make representations in person, clear advice was given to me that that request could hardly be denied. The application for prisoner transfer had been submitted by his national Government, not through his legal defence team in the High Court. As I have said, it would have been outwith the tenets of natural justice to refuse his request, and I met Mr al-Megrahi at Greenock prison on 6 August. The note of that meeting, together with the text that he read out to me, has been published.

I now turn to compassionate release. Section 3 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 gives the Scottish ministers the power to release prisoners on licence on compassionate grounds. The act requires ministers to be satisfied that there are compassionate grounds that justify the release of a person who is serving a sentence of imprisonment. Although it does not specify the grounds for compassionate release, the principles are set out in guidance from the Scottish Prison Service, which suggests that compassionate release may be considered when a prisoner is suffering from a terminal illness and death is likely to occur soon. There are no fixed time limits, but a

life expectancy of less than three months may be considered an appropriate period. The guidance makes it clear that all prisoners, irrespective of sentence length, are eligible to be considered for compassionate release. That guidance has also now been published.

I received an application for compassionate release from Mr al-Megrahi on 24 July 2009. In accordance with the procedure that is laid down in the 1993 act and the SPS guidance, the application was sent first to the SPS so that I could be provided with reports and recommendations by the governor of Greenock prison, the doctors and prison social work staff. The medical advice before me consisted of a report from the SPS director of health and social care, Dr Andrew Fraser, who is a former deputy chief medical officer for Scotland and one of the country's most eminent doctors.

Let me be clear: national health service consultants, including experts in palliative care, were consulted as part of Mr al-Megrahi's care. Dr Fraser had access to all Mr al-Megrahi's medical records and conferred with NHS consultants as part of the process of drafting his advice on compassionate release. The people with whom he conferred included the NHS cancer consultant who acted as an external reviewer—the suggestion that the SPS director of health and social care did not consult relevant specialists is totally inaccurate. Dr Fraser's report took all the expert views into account and is clear. It states:

“the clinical assessment is that a three month prognosis is now a reasonable estimate for this patient”.

The governor's report forms a further part of the procedure. It is equally clear and it, too, recommended compassionate release.

As part of the established procedure in assessing an application for compassionate release, the case was referred to the Parole Board for Scotland on 10 August. It was considered by the board on 11 August, and the board's recommendations were included in the advice that I received on 14 August. The board was also clear on the question of Mr al-Megrahi's prognosis. Its report states that

“there can be very little doubt as to the short life expectancy”

of Mr al-Megrahi, and it made a unanimous recommendation, stating he was “suitable for compassionate release”.

Since 2000, the Scottish ministers have considered 31 applications put forward by the Scottish Prison Service for compassionate release on medical grounds. Seven have been refused and 24 granted. The seven applications were refused because they did not at the time meet the criteria for compassionate release. There has been no case in which the recommendations from

the Scottish Prison Service and the Parole Board were all positive but ministers refused the application.

It has been suggested that Mr al-Megrahi could have been released from prison to reside elsewhere in Scotland. Clear advice from the deputy chief constable of Strathclyde Police on 14 August was that the security implications of such a move would be severe.

Jeremy Purvis: If the advice had been contrary to that, and the police had said that there was not a security consideration, are there any grounds on which the cabinet secretary would have refused the application?

Kenny MacAskill: I say to Mr Purvis that I do not in this instance or in any instance breach the constitutional rules that we have in this Parliament and in this country that state that I do not interfere in operational matters for the police. I follow the advice that is given.

I was advised that a minimum of 48 officers would be required simply to allow Mr al-Megrahi to live in Scotland. The option of having such a large police presence in a residential area and the need for additional resources to manage hospital visits rendered it utterly inappropriate, and I ruled it out on that basis.

Margaret Smith (Edinburgh West) (LD): Will the minister give way?

Kenny MacAskill: I am in my final minute.

Mike Rumbles: On a point of order, Presiding Officer. Do you realise that Mr MacAskill might have inadvertently misled Parliament when he said that he would never interfere in the operational direction of any police authority? It is on record that the special adviser to the Scottish Government did precisely that.

The Presiding Officer: That is a matter for the minister to respond to as he sees appropriate.

Kenny MacAskill: It was not a question of cost or capability—I know that Strathclyde Police would have risen to the challenge—but I found grotesque the idea of an armed camp or international media circus in a residential area, or even worse, in a hospice for the dying.

Accordingly, as Mr al-Megrahi met the criteria, it was my responsibility to decide whether to release him. Based on the values, beliefs and common humanity that define us as Scots, I allowed him to return home to die.

I move,

That the Parliament notes the decisions by the Cabinet Secretary for Justice to reject the application by the Libyan Government to transfer Abdelbaset Ali Mohamed Al Megrahi under the prisoner transfer agreement between the United Kingdom and Libya and to release Mr Al Megrahi on

compassionate grounds; notes that the decision on compassionate release is in accordance with the recommendations from the Scottish Prison Service and the Parole Board for Scotland, and endorses the decision as being consistent with the principles of Scottish justice.

09:53

Richard Baker (North East Scotland) (Lab): It is impossible for us in this chamber to comprehend the terror and suffering of those who died in the Lockerbie bombing, and it is difficult for us to imagine the extent of the trauma and grief of the families who were left behind. However, what we do know is that the decision that was faced by the cabinet secretary was a difficult one that could not be more important. That means that it was crucial that it was made using due process, that it was handled with sensitivity, and that it was informed not only by the important quality of compassion, but by the other words that are inscribed on the mace of our Parliament: “integrity”, “wisdom” and “justice”. The sad reality for us today is that, too often, those elements were missing from a chaotic decision-making process that was badly mishandled by the cabinet secretary, and which has reflected badly on Scotland. I believe that we should make clear the fact that there were fundamental errors in the management of this process and state that, therefore, the decision to release Mr al-Megrahi on compassionate grounds to Libya is one with which we cannot agree.

We lodged our amendment with confidence. The First Minister might not like it, but his Government will be held to account for the decision that he and his ministers have made.

The First Minister: When Mr Baker lodged his amendment yesterday, was he aware of the position, as reported to the Libyan authorities, of the then Foreign Secretary and the Prime Minister?

Richard Baker: That is irrelevant, because the decision was for the First Minister and the cabinet secretary. Mr Rammell and everyone else have made it clear that the decision was for the First Minister and the cabinet secretary. They must be held accountable for it, which is what we will do today. They might want to deflect attention from themselves, but that only shows their lack of confidence in their decision.

Alasdair Allan (Western Isles) (SNP): Will the member give way?

Richard Baker: I will not. We are dealing with a serious issue and we are trying to claw back some of our reputation, so I hope that members on the Government party's benches will raise their game and treat the debate with some dignity.

Yesterday, some of the documents that informed key aspects of the process were released. They raised more questions than they provided answers. Perhaps we will receive some answers from the cabinet secretary today.

It becomes ever clearer that, well before he made the formal announcement of his decision, the cabinet secretary had already come to the conclusion that he would free al-Megrahi to go back to Libya, and that he then marshalled the evidence as best he could to justify that decision. That flies in the face of due process and is something that this Parliament should not accept.

I wish to highlight a number of areas in which I believe that due process was not followed. A crucial example is the cabinet secretary's decision to meet al-Megrahi personally in Greenock prison. Did he not realise when he was driven into Greenock prison, past television cameras from around the world, to meet Mr al-Megrahi that it would cause widespread misgivings about his management of this crucial process? He must have known that it was unprecedented for someone in his position to meet directly a person who had been convicted of such heinous crimes, not only while he was considering his application for compassionate release, but while his appeal was on-going.

Ian McKee (Lothians) (SNP): If the member feels that it is a "heinous" crime to visit a mass murderer in his prison cell, what does he think about a head of state visiting the person who commissioned that mass murder in his tent in Libya?

Richard Baker: The meeting between the cabinet secretary and Mr al-Megrahi took place while Mr al-Megrahi's appeal was on-going and was entirely unnecessary. That is quite a different situation from the one that Ian McKee describes.

The cabinet secretary has said that he had to meet Mr al-Megrahi because of natural justice, but originally he said that he had to do so because Jack Straw implied that he should, although he had to withdraw that statement because it was clearly misleading to Parliament.

The justice department letter of 7 July shows that, incredibly, the meeting was not the initiative of Mr al-Megrahi but was first suggested by the cabinet secretary. I find that incredible. Did no warning bells sound before that approach was made about how inappropriate it was?

Alasdair Allan: Will the member give way?

Richard Baker: I must make progress.

At first, Mr MacAskill said that he had to have the meeting because he was following advice from Jack Straw, but that has been shown to be totally incorrect. Now we find from the minute of the

meeting that it was the cabinet secretary who raised the issue of al-Megrahi's appeal—as Mr Rumbles pointed out—and said that it would have to be dropped in order for the transfer request to go ahead. Of course, only a few days later, that appeal was dropped. That is quite a different account from the one that we had from Mr MacAskill in the chamber last week.

I want to turn to a number of other flaws in the process on which questions remain. Mr MacAskill has referred to the view of the Parole Board, which said that al-Megrahi was a suitable candidate for release, largely on medical evidence that I shall deal with later. However, it is clear that that was simply advice to ministers and that the final decision lay with them. The board also noted that no victim representations had been presented for consideration. Surely that is an opportunity that should have been given to the families of those who died.

I have said that I believe that the cabinet secretary had made his mind up a long time before he announced his decision: the papers show that, on 22 July, his officials discussed with Libyan officials the potential and timescale for compassionate release to Libya for al-Megrahi. However, it was only on 14 August that a meeting took place with Strathclyde Police to discuss the security implications of his being released on compassionate grounds but remaining in Scotland, where conditions on his license could obviously be more rigorously enforced. However, on that same date, officials advised that they had already prepared for the contingency that Megrahi would be supervised in Libya by East Renfrewshire Council. It seems that far more effort has gone into that than into considering alternatives in Scotland.

Strathclyde Police—at least prior to the wholly inappropriate intervention in police matters by the First Minister's spokesman—stated:

"If a decision had been made to release Mr al-Megrahi in Scotland, we would have provided whatever security was required."

The cabinet secretary had a duty to examine all the options, but he simply was not interested in them. I am sure that other members will return to that point.

There are other questions of process. Why was Mr Megrahi sending his belongings home weeks before the decision was apparently made, and who knew about that? In addition, important elements of the guidance on compassionate release do not appear to have been given much consideration. Crucially, the guidance states that the type of offence and the length of sentence that is outstanding form part of the criteria. Mr Megrahi had 19 years left to serve of a sentence that the Crown was appealing against as being unduly

lenient. Did the cabinet secretary really give that full consideration?

I turn to the medical advice that the cabinet secretary received—or, as appears to be the case, did not receive—in relation to Mr al-Megrahi's health. The cabinet secretary received the views of five doctors: one general practitioner and four cancer specialists. How can we have any confidence in the decision that the cabinet secretary reached when four specialists were not willing—as Dr Fraser highlighted in his report—to say that Mr Megrahi had less than three months to live? A number of experts, including Professor Roger Kirby, the chairman of Prostate UK, have cast severe doubt on that assessment. Why was the caution that was expressed by four cancer specialists disregarded?

Tricia Marwick (Central Fife) (SNP): Will the member give way?

Sandra White (Glasgow) (SNP): Will the member give way?

Tricia Marwick: Who will the member choose?

Richard Baker: I ask the members to choose between themselves.

The Presiding Officer: I call Sandra White.

Sandra White: Will Richard Baker tell me in all sincerity—with his hand on his heart, and bearing in mind that the word “integrity” appears on the mace—whether the amendments that the Labour Party and the other Opposition parties have lodged are political posturing of the worst kind, rather than anything to do with Megrahi or even the Lockerbie victims?

Richard Baker: That question is not pertinent to the medical evidence to which I was referring. Frankly, it is a load of nonsense.

Why was further medical opinion on such a crucial issue not sought? Why did the cabinet secretary choose to base his decision on the solitary opinion of a single GP? We cannot be certain of how long Megrahi has left to live, but there is huge doubt about the three-month prognosis to which the cabinet secretary and the guidance on the decision have referred.

Tricia Marwick: Will the member give way?

Richard Baker: After hearing the previous intervention, I would rather make some progress.

Shortly after the meeting in Greenock prison, the BBC announced that Megrahi would be released back to Libya, in exactly the way in which events transpired a week later. It was not this Parliament that was told first, nor—more important—was it the families of those who died, but a broadcaster. That meant that, for a week, there was speculation and counterspeculation—often from the Scottish

Government—about the decision. Naturally, there were urgent representations and views on the matter from the United States and Libya.

If the cabinet secretary is confident that he and his advisers were not responsible for that appalling breach of protocol, he should have no misgivings about calling a leak inquiry to examine the matter—but he has yet to do so. I urge the cabinet secretary to do so today, because that breach can only have made this a more difficult time for the families of the victims. It made the anger of the many people at home and abroad who opposed the decision all the more acute when the leaks were finally confirmed and we saw Mr Megrahi, who was convicted of 270 counts of murder by the Scottish courts, returning to Libya amid saltires flying at Tripoli airport.

Margo MacDonald: Will Richard Baker sign the motion that I lodged three weeks ago and which demands an independent inquiry?

Richard Baker: It is inevitable that the decision will be subject to further parliamentary scrutiny, and I take on board Margo MacDonald's point.

I turn to Mr MacAskill's statements on the prisoner transfer agreement, to which he has given ample weight. In fact, the prisoner transfer agreement could never have been agreed anyway, because the Crown appeal against the leniency of Mr Megrahi's sentence was outstanding. The cabinet secretary's response earlier today did not make sense. It may suit the Scottish Government to focus attention on that agreement, but it does a disservice to proper scrutiny by Parliament. Whatever decision was made, it was always for Scottish Ministers to make. The decision was for release on compassionate grounds. That was an issue for Scottish ministers alone.

It would have been much better if the application for compassionate release had simply been treated like any other: if the medical evidence, written representations and advice from the Scottish Prison Service had simply been gathered and a decision made on the basis of that information, without fanfare and pre-announcement. However, by the time the cabinet secretary made his announcement, it was inevitable that there would be huge questions about his reasoning in making the decision. It was inevitable, given the leaks and speculation that characterised the weeks leading up to the decision, that the response from those who disagreed with his decision would be all the more anguished. That was regrettable, avoidable and damaging for our country.

However, it was not simply the way in which the decision was made that hurt our international reputation—

Kenny MacAskill: Is Richard Baker suggesting that I should not have considered the prisoner transfer application at all, despite representations from the Foreign and Commonwealth Office that it was appropriate that it proceed?

Richard Baker: I am saying that it is academic, because the Crown appeal was on-going.

It was not simply the way in which the decision was made that hurt our international reputation, but the way in which it was announced. Many of us here are Christians: in Scotland, we have people of many faiths and none. However, Mr MacAskill's suggestion that the only compassionate action to take was to grant Mr Megrahi compassionate release to Libya was wrong. His suggestion that the decision should be taken in the context that, as a cancer sufferer, Mr Megrahi was being judged by a higher authority was bizarre and actually quite offensive, his characterisation of our justice system was wrong and his suggestion that his view of our national understanding of compassion was the only possible view was quite wrong.

It is clear that there are in Scotland different views of this difficult decision, and I respect those who hold a different view from mine, but it is also clear that the majority of Scots believe that Mr MacAskill made the wrong decision. It shows arrogance that is typical of the current Administration that the cabinet secretary presumed that he could speak for all Scots on the matter, when clearly he could not. He has failed to justify the decision that he has made, and to account for the shambolic way in which he went about making it.

Today we will record that Parliament cannot endorse a decision that was meant to be arrived at through due process, but which instead came about through manipulation and mishandling. I believe that Scotland's Parliament will act today to restore the reputation that Scotland's justice secretary has done so much to damage.

He has spoken for his Government and for his party, but he has not spoken for this Parliament or for this country.

I move amendment S3M-4748.1, to leave out from second "notes" to end and insert:

"believes that the process of making this crucial decision was mishandled by the Cabinet Secretary for Justice; believes that it was wrong for the Cabinet Secretary for Justice to meet Abdelbaset Ali Mohamed Al Megrahi in prison while considering his application for compassionate release to Libya and that this potentially sets an inappropriate precedent; also believes that it was unacceptable that the media was made aware of the decision a week before it was formally announced; does not accept that the Cabinet Secretary for Justice received or sought sufficient medical advice to make his judgement on Megrahi's prognosis; further believes that the Cabinet Secretary for Justice did not sufficiently explore options to

take account of Megrahi's illness other than compassionate release to Libya; recognises that Scotland's international reputation has been damaged not simply by the decision to release Megrahi on compassionate grounds to Libya but also because of the way that taking the decision was mishandled, and, given the mishandling of this process by the Cabinet Secretary for Justice, does not agree with his decision to return Megrahi to Libya on compassionate release."

10:06

Bill Aitken (Glasgow) (Con): Today, we debate a decision that was fundamentally wrong, and a decision process that was deeply flawed. The decision to release Mr Megrahi back to Libya was a mistake of international proportions. If the Salmond Government was so adamant that the Lockerbie bomber had to be released on compassionate grounds, why—despite what has been said this morning—could he not have been kept in Scotland? The failure to investigate properly whether Mr Megrahi could have been released into secure care in Scotland has proved to be a catastrophic error of judgment. All the evidence shows that the Salmond Government did not take that option seriously. Why not? It is becoming abundantly clear that the Salmond Government decided to release Mr Megrahi to Libya and has been scrambling around ever since to find the evidence to justify that decision.

From the evidence that has emerged overnight, I believe the Brown Government thought that Mr Megrahi would and should be released, and was giving nudges and winks to the Libyans that that would be the case. The plot thickens—deals were clearly being done.

The meeting on 22 July between the Libyan Government and senior Scottish Government officials clearly indicates that a decision to release Mr Megrahi to Libya had been taken three weeks before the police were consulted on keeping him in Scotland. The justice secretary stated last week that police advice strengthened his view that Megrahi should be released to Libya. However, the police evidence in that respect is ambivalent: the police were not asked specifically whether Mr Megrahi could be kept securely or not.

Margo MacDonald: Will the member give way?

Bill Aitken: I will not give way just now.

The question remains. If the Glasgow airport bomber could be held securely for more than a month in a Scottish hospital, why did the justice secretary feel that the police were unable to hold the Lockerbie bomber in secure care? Mr MacAskill has so far failed to provide an adequate answer to that question.

If the Scottish police can secure the G8 summit, including President George W Bush, cannot they safely secure one sick man and his family—a

family that, I remind members, had lived in Scotland for some time without incident?

Margo MacDonald: Will the member give way?

Bill Aitken: No.

There are too many unanswered questions, and the evidence that was released yesterday has served only to deepen the suspicions that deals have been done. It has emerged that Prime Minister Gordon Brown told the Libyans that he did not want Mr Megrahi to die in jail. Is not it remarkable that Mr Brown can make his feelings known before the decision was made, but not afterwards?

The Salmond Government in Scotland has also not done enough to prove that its decision to release a mass murderer was based on sound evidence and solid advice. Where is all the medical evidence? Where is the evidence and advice that Mr MacAskill was given that led to his decision not to keep the Lockerbie bomber in secure care in Scotland? Why was the Salmond Government so adamant that Mr Megrahi could not be released under a prisoner transfer agreement, but then said that he could be released on compassionate grounds? How can the Government justify not releasing Megrahi to a Libyan prison but releasing him to his Libyan home? It just does not make sense.

The law is clear that the Scottish Government alone should have made the decision. I just wish that it had been made in a less amateurish manner. I am not arguing about whether it was a difficult decision to take—it was a very difficult decision. I just wish that the Salmond Government had made the decision in a less cack-handed manner. Perhaps the First Minister, Mr Salmond, should have stepped up to the mark when the decision was made, and not left his justice secretary to be hung out to dry. The decision was the biggest one that the Salmond Government has had to take, and the First Minister left it to Mr MacAskill. Typical.

I also find it incredible, and in some ways abhorrent, that a justice minister should visit a mass murderer in prison. Mr MacAskill is correct to say that an applicant for release in such circumstances has the right to put forward his case personally, but that does not mean directly to the minister. The matter could have been dealt with by officials. Mr MacAskill's decision to go personally to Greenock jail shows almost breathtaking naivety and sent out completely the wrong message.

Why does a Scottish National Party back bencher insist that pressure was put on Megrahi by senior Scottish officials to drop his appeal? That is denied by the First Minister and it was denied by Mr MacAskill in a letter to me yesterday,

but if they are so confident that the papers do not exist, why will he not ask the back bencher to put up or shut up? I seldom agree with the member concerned, but I have always found her to be totally honest. Do the e-mails really exist? If so, we should know.

I turn to the medical justification for the decision. Again, the evidence is there, but it is simply not adequate. Mr MacAskill is not qualified to make a medical decision—nor, in fairness, would he claim to be so—but is it not absolutely astonishing that, in effect, he was prepared to predicate a decision of such gravity on the advice of one clinician and on that of others who had not personally examined Mr Megrahi? There appears to have been no categorical advice that Megrahi had only three months to live. It is absolutely astounding that, on a decision of such importance, Mr MacAskill refuses to publish independent expert advice to back up his case.

Mr MacAskill's decision to see Megrahi, the fact that the decision was leaked, his failure to obtain thorough and corroborated medical evidence and the fact that no options were considered other than return to Libya can only persuade any dispassionate observer that the decision to repatriate Megrahi was taken weeks ago and that, thereafter, the evidence had to be sought to justify that decision.

Margo MacDonald: Will the member give way?

Bill Aitken: No.

According to the justice secretary, the decision was taken on compassionate grounds, but has there ever been a less deserving case? Mr al-Megrahi murdered 270 people. He showed no compassion for his victims. He has admitted his guilt by dropping his appeal. Mr MacAskill has made it clear that he believes that Megrahi is guilty, yet he has been allowed to return to Libya to a hero's welcome. That was fundamentally wrong.

The SNP also seems to think that Scotland has a monopoly on compassion. That is nonsense, and quite frankly I was astonished that the SNP sought to make nationalist capital out of this serious international issue. The episode has proved not only that the SNP is inexperienced and unable to cope on the international stage but that it is pretty small-minded and petty into the bargain.

We need to know the facts. We need an inquiry at Westminster but also an inquiry here. Too much suspicion remains. Many people in Scotland must feel today that the Scottish people have been let down by two Governments—Alex Salmond's at Holyrood and Gordon Brown's at Westminster.

I move amendment S3M-4748.1.1, to insert after second “Libya”:

“; recognises the ability of both the Scottish police and the NHS in Scotland on the basis of past performance to have supported the release of Mr Al Megrahi to an appropriate location and regrets that this was not adequately explored”.

10:15

Robert Brown (Glasgow) (LD): Few of us in the chamber today and few people throughout Scotland doubt the difficult nature of the decision that the Cabinet Secretary for Justice took about the release of Mr al-Megrahi, who was convicted of what Mr MacAskill rightly described as the “heinous” murder of 270 people all those years ago. Let me say immediately that the decision was the justice secretary’s to make and that it is rightly not subject to review by the Scottish Parliament or anyone else, a “higher power” or otherwise. However, the minister is accountable to Parliament and, more important, to the public, for the decision and particularly for the manner in which it was made.

The matter, of course, has attracted enormous international attention and focus on Scotland. Much of that attention has been hostile or unfavourable, whether from the American relatives or resulting from the invidious sight of the saltires waving in Tripoli during that triumphal return—although even that could be tolerated if the decision was right and was seen to be right. It is Parliament’s job today to examine whether that was the case.

Kenny MacAskill’s decision was a quasi-judicial one that was required to be made in terms of the relevant law—in this case, the Prisoners and Criminal Proceedings (Scotland) Act 1993 and, more particularly, the updated circular 21A/05, which was issued by the Scottish Prison Service in June 2005.

Margo MacDonald: Will the member give way?

Robert Brown: I will not give way at the moment, if the member does not mind.

The justice secretary told us of the medical evidence, of the predictions of Mr Megrahi’s life expectancy, and of the three-months rule, which is not binding but which, in effect, he purports to have applied in this case. It is now clear, as others have said, that there was considerable doubt as to whether Mr Megrahi fulfilled the criteria of the three-months rule. However, in neither the cabinet secretary’s address to the world, nor in his statement to Parliament last week, did he identify clearly the full criteria that required to be considered in considering an application for compassionate release. They are contained in annex 1 to the guidance, which states that specific

factors must always be considered in such cases. They include the

“type of offence and prisoner’s supervision level”,

and

“The length of the sentence outstanding, the effect on the overall sentence if early release is granted and any comments that the trial judge made on sentencing which may have a bearing on the question of early release”.

In other words, compassion—worthy as it is—is not an unrestricted reason for compassionate release. There is a balance to be struck. If the man who has been convicted of the Lockerbie bombing gets out after serving only a fortnight for each victim’s life, it is extremely difficult to see how any future cabinet secretary could refuse any valid application for compassionate release, however heinous the crime and however short the time served. It is noteworthy that none of that is in the official advice—the specific factors that have to be considered. Did Mr MacAskill ask to see the actual text of the guidance, and if not, why not, on such a vital issue?

Margo MacDonald: Although I fully appreciate Robert Brown’s description of the legal niceties, would he have disregarded the realpolitik that swirled around the al-Megrahi case and made it a unique decision?

Robert Brown: The question is not whether I would have disregarded it; the point is that the cabinet secretary is required to disregard it. These things are important, but the decision has to be made on legal grounds. That is why I and others are stressing the point. My submission to Parliament on the point is that Mr MacAskill and his officials misdirected themselves as to the basis of the decision by not giving proper legal consideration to the guidance and the balance of considerations in it.

Mr MacAskill was required to act in a quasi-judicial fashion—literally, in an even-handed way, like a judge. However, I have to say that, in my years of legal practice, I never heard of a judge whose decision was leaked to the world’s press before he issued it, nor can I say that I have heard of a judge who visited the accused or convicted person in anything like these circumstances in his prison cell. Let me illustrate why that needs to be so, by dwelling for a moment on the justice secretary’s visit to Mr Megrahi in Greenock prison.

We have prised the note of the meeting out of the Scottish Government, which issued it so reluctantly and belatedly yesterday. Mr MacAskill stressed that the meeting was part of his consideration of the prisoner transfer agreement, but said that he was considering the matter in parallel with the compassionate release application, which he had received by that time. The minute of the meeting states:

“Mr MacAskill stated it was necessary to highlight that when he makes his decision on prisoner transfer, he can only grant a transfer if there are no court proceedings ongoing. Mr MacAskill stressed that this was a decision for Mr Al-Megrahi and his legal team alone.”

What was the purpose of that statement? Megrahi had a highly skilled legal team and was accompanied by his solicitor; those people, the Libyan Government and, indeed, Mr Megrahi himself knew the condition with regard to the PTA.

Kenny MacAskill: I remind Mr Brown that the application was made by the Libyan Government, not through Mr Megrahi’s team, which was involved in the High Court appeal. Mr Megrahi was accompanied by his solicitor. However, as I have said, that related to the PTA and was a request from Mr Megrahi. Those matters are entirely separate from concurrent events in the court of appeal.

Robert Brown: The fact remains that in the unprecedented and inappropriate personal discussion that took place with Mr Megrahi in his prison cell, stress was placed on the condition in the PTA of the abandonment of the appeal. By instigating such a personal meeting and raising this issue himself, Mr MacAskill was, at the very least, laying himself open to the suggestion that he appeared to want the appeal to be dropped and that the appeal was a precondition in every other matter.

Furthermore, the Libyan Government’s prisoner transfer application said that Mr Megrahi

“has submitted a written undertaking to the Libyan side stating that he is willing to abandon his appeal if the other party”—

that is, the Scottish Government—

“approved his transfer to his home country”.

In other words, al-Megrahi was seeking to bargain with the Scottish Government over the dropping of the appeal. As I said at the beginning of my speech, the cabinet secretary must deliver justice and be seen to deliver justice in a proper process according to law.

It is also clear from—I believe—seven meetings between Scottish Government officials and senior Libyan Government officials since at least October 2008 that the ground was being prepared for a release on compassionate grounds rather than on the basis of a prisoner transfer—which, I have to say, would have been granted over Mr Salmond’s dead body, given the background to the matter.

The truth is that there were two parallel tracks that sometimes overlapped. First, there was the UK Government’s pursuit of the prisoner transfer agreement, perhaps with the laudable, if ambiguous, objective of better relationships with Libya. The Scottish Government wanted no truck

with such a move—it was blighted by association with UK Labour ministers and had been damned by the First Minister—and was instead intent on the course of compassionate release. However, both Governments clearly wanted Mr Megrahi out, perhaps, as Margo MacDonald has suggested, for wider political reasons.

One further question that troubles me is why Mr al-Megrahi abandoned his appeal after Mr MacAskill met him in prison. It seems to me that it is in the Scottish Government’s power to find some way of examining and testing the issues that would have been raised at that appeal and any new evidence associated with it—which is what we have lost as a result of the appeal’s being abandoned.

No matter whether it was right or wrong, or whether it was timely or premature, the decision has been made. One thing that Parliament can do is press the cause of those who still grieve. That is worth while and, indeed, is a matter on which the SNP Government has fallen short. After all, the enlightenment had its following in our country, and Scotland should be known as a place where justice and the rule of law are precious, not just the compassion that we all share

Tricia Marwick: Will Robert Brown give way?

The Presiding Officer: No. The member is just finishing.

Robert Brown: I move amendment S3M-4748.1.2, to insert after second “Libya”:

“, in particular the opportunities for compassionate release within Scotland; believes that the announcement should have been made to the Parliament rather than to a press conference; considers that justice and compassion for the victims’ families have not been served by this process;”

The Presiding Officer: We come to the open debate. Members will have got the picture that time is extremely tight, so I warn those who will speak later that they might get foreshortened.

10:24

Michael Matheson (Falkirk West) (SNP): Like many people, I recognise that the decision that the cabinet secretary had to reach is probably one of the most difficult made by any minister in the short life of this Parliament. I have spoken to many constituents and friends about the decision; although some supported it and others opposed it, all said that they were very glad not to have been in the position of having to make such an extremely difficult decision.

I believe that the cabinet secretary took the right decision for the right reasons. Indeed, the documents that have been released in the past 24

hours demonstrate that he conducted the whole matter in accordance with the law in Scotland.

One element that has been particularly challenged is the cabinet secretary's decision to visit Mr al-Megrahi in Greenock prison. Recently, there has been confusion about whether the visit was about the compassionate release request or the prisoner transfer agreement. As the documents that were published yesterday show and as the cabinet secretary himself has stated on a number of occasions, the visit was purely about the prisoner transfer application. I concede that—

Jeremy Purvis: Will the member give way?

Michael Matheson: No—I want to make some progress.

It is fair to say that the visit to the prison was unprecedented. However, it is worth keeping in mind the fact that the prisoner transfer agreement under which the application had been made was also unprecedented. The agreement was the first to have been signed by the UK Government that did not require the prisoner's consent to repatriation. Jack Straw made it very clear to the Joint Committee on Human Rights that, where a prisoner has not made an application, they should be given the opportunity to make representations to the decision maker.

Of course, written representations could have been made and, under normal circumstances, that might have been appropriate. However, we need to consider the facts of the case. Every other party involved had been given the opportunity to discuss the matter directly with the cabinet secretary either in person or by videolink. Would it not have been rather strange to refuse the very person who was the subject of the application the same opportunity? It could well be argued that, had the cabinet secretary spoken to all other parties but refused to speak to Mr al-Megrahi and had then turned down both applications, such a decision, because of its quasi-judicial nature, could have been open to judicial review. Given the importance of the decision, I think, on balance, that the cabinet secretary's prudent approach in ensuring that all parties had the opportunity to make direct representations to him was the right one.

Robert Brown: Is the truth of the matter not the other way round? Mr al-Megrahi was allowed to make representations about compassionate release and the prisoner transfer application while the UK relatives and others were expressly refused any opportunity to make representations about compassionate release, which, as we now know, was the main thrust of the Scottish Government's approach.

Michael Matheson: Unfortunately, Mr Brown is trying to rewrite what happened. The note of the

meeting makes it quite clear that it was about the prisoner transfer agreement.

I want to move on to another important issue: the compassionate release system in Scotland. I believe that, despite what some have said in recent days, the compassionate release procedure is a strength of our justice system rather than a weakness. In recent weeks, the Opposition parties have all tried to state that, in some way, the compassionate release procedure has not been applied correctly in this case and that, given the horrific nature of Mr al-Megrahi's crime, he should not have been entitled to such consideration. Although such a position might, on the surface, seem attractive, what it does not make clear is how we can have a compassionate release system that is determined by an individual's crime. Should we have a list of crimes for which individuals should not be entitled to compassionate release? In effect, such a move would turn a quasi-judicial system into a political system.

Margo MacDonald: Is the member saying that compassion has no limits, that it is an absolute and that, once such a decision is made, it must be applied?

Michael Matheson: We must ensure that we have a consistent approach to dealing with these matters. The cabinet secretary took the same approach to this case that he took to the other 25 cases in which compassionate release was granted.

As the documents published by the Scottish Government clearly demonstrate, the cabinet secretary followed due process in reaching his decision. I am sad to say, however, that the attacks by Opposition parties on their own legal system with regard to the compassionate release procedure serve only to further their narrow political advantage. They do not recognise the damage that they might cause to our justice process. While Iain Gray is saying that he would not have released Mr al-Megrahi at all, his masters in London have been telling the Libyans something entirely different. While the Tories here have been saying that Mr al-Megrahi should have been allowed to go to a hospice or some kind of hospital somewhere else, David Cameron has been saying that he should never have been released in the first place. Then we have the Lib Dems, whose leaders of the past have stated that the decision was clearly the right one.

When it comes to standing up for the principles of humanity and decency, I would rather be standing alongside towering individuals such as Nelson Mandela than so-called political leaders in the Parliament with their small-minded, double-standard politics.

10:30

Elaine Murray (Dumfries) (Lab): The Government motion concludes by stating that the decision to release Mr al-Megrahi on compassionate grounds was

“consistent with the principles of Scottish justice.”

On 15 January, the First Minister stated on the topic of possible release:

“On the questions of conditional or compassionate release ... on every occasion I have emphasised the critical importance of upholding the integrity of the Scottish judicial system”.—[*Official Report*, 15 January 2009; c 14061.]

That is the point of the debate. Did the decision and the process by which it was taken uphold the integrity of the Scottish judicial system? Was it consistent with the principles of Scottish justice? Was releasing Mr al-Megrahi to Libya, to be fêted on his return to his homeland, the correct decision? Was it compassionate to all those affected by the atrocity that took place in the skies over Lockerbie on 21 December 1988?

I turn first to the cabinet secretary’s meeting with Mr al-Megrahi on 6 August in Greenock prison. From earlier statements that Mr MacAskill made, I received the impression that the prisoner had approached him with a request for a meeting. The acceptance of such a meeting would, in itself, be highly unusual, although the case was exceptional. However, I was astonished when the documents that were published yesterday revealed that the deputy director of the criminal justice directorate, Mr George Burgess, wrote to Mr al-Megrahi on 7 July 2009—ironically, on notepaper with the slogan “Homecoming Scotland 2009”—stating that, as part of the process of consideration of prisoner transfer release, Mr al-Megrahi had

“the opportunity to put forward”

his

“own representations either in writing or personally to Mr MacAskill.”

Mr Burgess then requested that Mr al-Megrahi let him know whether he wished to meet Mr MacAskill. So, in fact, the cabinet secretary offered to meet Mr al-Megrahi, initially, apparently, to discuss prisoner transfer, despite that not being possible at the time because of the two outstanding appeals against his sentence.

The offer was made on the basis that Mr MacAskill had received direct representations from other parties. Therefore, on 6 August, the cabinet secretary met a terminally ill man—a man who was missing his family and desperate to return to his homeland in time for Islam’s most important festival, and probably his last opportunity to celebrate Ramadan. We know that the possibility of Mr al-Megrahi dropping his appeal was referred

to at the meeting. The application for compassionate release had already been lodged, on 24 July, and Mr al-Megrahi made several references to his terminal illness and his desire to see his family, as well as protestations of innocence. Prisoner transfer and compassionate release appear to have been conflated.

In contrast, the videoconference with members of the families of only nine of the 180 American victims discussed their views only on prisoner transfer. The same is true of the face-to-face meetings with relatives of three of the British victims, the one Spanish victim and one Lockerbie family. The views of the Libyan Government were sought. Was any consideration given to trying to ascertain the range of views of the community of Lockerbie or the victims’ families on compassionate release to Libya? Let us remember that, prior to the night of 21 December 1988, the relatives of 270 people had been looking forward to celebrating an important religious and cultural festival with them, and those people were wiped off the face of the earth.

Mr MacAskill has said that some wounds will never heal, but did he not realise that the sight of a convicted terrorist being fêted on his return to the country that had admitted responsibility for organising the atrocity would reopen those wounds? It was not only those people who lost their loved ones who were affected, although of course their loss was the greatest. The people of Lockerbie who witnessed the descent of Pan Am flight 103 and subsequently looked after the remains and comforted relatives demonstrated compassion in the greatest degree. The events also affected members of the emergency and rescue services and the police officers who searched meticulously for evidence. Incidentally, all but one of the investigating officers who have contacted me are firmly convinced of Mr al-Megrahi’s guilt. All those people were affected and suffered to varying extents.

One lady described in a recent letter to me her experience that night of hiding under a table with her three-month-old baby, seeing the light from the unexplained explosion and the fire and breathing the fumes, convinced that they were going to die. She did not express a view on the decision, but she wanted to tell me how it felt then and afterwards, as she struggled to cope with the psychological aftermath. Even today, the town struggles under the yoke of being associated solely with the bombing.

Ted Brocklebank (Mid Scotland and Fife) (Con): Will Elaine Murray give way?

Elaine Murray: No, I will not.

Has the decision upheld the principles of Scottish justice? Has that justice been extended

proportionately to the relatives of the victims and the residents of Lockerbie as well as to Mr al-Megrahi? Was real consideration given to the alternative of releasing al-Megrahi to secure accommodation in Scotland where his family could be with him in his final days? Although the Libyan Government knew on 10 August that compassionate release was under consideration, Strathclyde Police was not asked for an assessment of the security issues of release to a Scottish address for another four days.

Joe FitzPatrick (Dundee West) (SNP): Will the member take an intervention?

Elaine Murray: No.

The prison social work department was not asked to assess that possibility. Make no mistake: Strathclyde Police would have stepped up to the mark, whatever it was asked to do, as the police always do. Much has been made of Bill Rammell's statement that the Prime Minister and the Foreign Secretary did not want al-Megrahi to die in jail. That is not the same as wanting him to return to Libya. There were alternatives to releasing him to Libya. The documents that were released yesterday do not convince me that those alternatives were investigated properly before being ruled out.

The First Minister: Will the member give way?

The Deputy Presiding Officer (Trish Godman): Sorry, but the member is finishing.

Elaine Murray: I cannot agree that the decision was consistent with the principles of Scottish justice. I therefore support all three amendments.

10:36

Ian McKee (Lothians) (SNP): When politics and clinical medicine come together, as is happening today, we former doctors sniff the air like old warhorses hearing the sounds of distant battle. The temptation to pontificate is enormous and, let us be honest, some of us give into it. Some Opposition members even try to twist medical facts to suit narrow party-political aims, yet that temptation must be resisted. There is no need for us to delve deep into semi-forgotten clinical areas, any more than there is a need for the non-medical Mr MacAskill to look up the word "prostate" in his well-thumbed "Encyclopedia of Family Health", for there is a due process to be followed in obtaining medical opinion. That process has been followed scrupulously in the case of Mr Megrahi.

When Mr Megrahi was in Greenock prison, he was under the medical care of the Scottish Prison Service. When he became seriously ill with prostate cancer, reports were compiled by the director of health and care of that service. He is not a vested-interest politician like Dr Simpson or

me but an experienced and impartial civil servant. To help him to compile his reports, the director involved a variety of specialists, both from this country and overseas. On 10 August this year, he reported to the justice secretary that there was sound evidence that the grounds for compassionate release under Scots law had been satisfied, as far as the medical situation was concerned. I repeat: the evidence and the conclusion were passed to the justice secretary by a senior and impartial civil servant.

Some Opposition members argue that the justice secretary should have challenged that conclusion and sought more evidence. They say that the civil service ignored the advice of a range of specialists and instead chose to take the opinion of a single doctor who, it is inferred, reached a conclusion that was more to the Government's fancy. Setting aside the point that that is a grave slur on the impartiality of one who cannot defend himself, that explanation simply does not fit with the facts. In June and July this year, a comprehensive range of specialists agreed unanimously that hormone treatment for the cancer had been unsuccessful and that the prognosis had shifted from a former assessment of many months, to one of months. However, the specialists were not willing to say whether that was more or less than three months, which is the time span that is mentioned in the Scottish Prison Service guidelines on compassionate release.

Then, between 27 July and 3 August, Mr Megrahi's condition deteriorated dramatically. At that stage, the primary care physician who had been caring for him since the early stages of his disease, after consulting an experienced consultant oncologist who also knew the case, sent an assessment to the director of health and care, which led to his recommendation that the medical grounds for compassionate release had been met.

Let us correct the misleading statements that have been made. It is not surprising that the consultants who were involved in the case in June and July were reluctant to give a prognosis of precisely three months or less. In my career as a general practitioner, I was sometimes asked for such a prognosis—perhaps a relative wanted to return from far away to be present at the end—but situations vary greatly. If the spreading cancer affects a vital organ, death might come quickly. If not, it will be a longer, drawn-out affair. The constitution of the patient must also be taken into account. Although precise estimates are impossible, the consultants agreed that Mr Megrahi had only a few months left to live. The final recommendation did not contradict that evidence, as Labour has alleged, but built on it. When a terminal condition deteriorates, life expectancy shortens—it is not rocket science. It

was only after that further deterioration that the justice secretary got the information to make his decision.

Should more expert opinion have been sought at that stage, as the Opposition claims? I find it strange and slightly insulting that Opposition members have so little confidence in the primary care physician who cared for Mr Megrahi throughout his terminal illness and who was party to all previous specialist opinions, including those given a matter of weeks before. He is a doctor with no political axe to grind who consulted an informed oncologist before passing on his assessment to his experienced medical director, who fully supported it. Although it might surprise some members, primary care doctors have the experience of caring for dying patients on a daily basis and are often more able to make such difficult assessments accurately than a distant specialist, however eminent.

I do not know whether Mr Megrahi will last one, two or four months—no one does. However, I know that the only way to guarantee that someone will be dead within three months is to wait until they are virtually on their deathbed. How compassionate is that?

The Opposition will win the vote tonight because narrow party-political interest has come to the fore but, when history judges the issue, it will be the Opposition's shallow opportunism that will be seen to have let Scotland down, not the principled decision by the justice secretary.

10:42

Jack McConnell (Motherwell and Wishaw) (Lab): In June 2007, I backed my successor against the Labour Government when the new First Minister rightly objected to the negotiations over prisoner transfer taking place without Scottish Government engagement. I said then that I would back SNP ministers when they got it right and oppose them when they got it wrong, so I hope members from all parties will accept that today I speak with genuine conviction and not with party politics in mind.

Many who have an interest in today's debate cannot be here and it is for them that I ask to speak: 270 men, women and children who died as a result of the Lockerbie bombing on 21 December 1988; over 400 parents who lost a son or a daughter, including 46 parents who lost their only child; 65 women who were widowed and 11 men who lost their wives; over 140 children and adults who lost a parent; and seven children who were orphaned. As the Lord Advocate said after the unanimous guilty verdict on 31 January 2001,

"they together with the other friends and relatives left behind are also victims of the Lockerbie bombing."

Absent today are Peter Fraser, Andrew Hardie and Colin Boyd, who each, as Lord Advocate of Scotland, gave guarantees to the families of the dead. The late Robin Cook secured United Nations resolution 1192 in 1998, based on a written guarantee that any sentence would be served in Scotland. The late Donald Dewar authorised the arrangements for the special court, a Scottish court, which unanimously found Mr al-Megrahi guilty and subsequently rejected his appeal.

For all of them I feel compelled to speak out, not because I believe that the Scottish Government showed too much compassion, but because I believe that the exercise of compassion has been imbalanced and that, on behalf of Scotland, the Scottish Government has broken our word.

I accept the Scottish Government's insistence that the decision was its judgment and its decision alone. It must answer for that judgment here, and we must judge it on the facts as outlined so far.

I was First Minister of Scotland when the appeal was determined in 2002 and Mr al-Megrahi was transferred to a Scottish jail. Then and since, he has been treated with all the humanity and compassion that we would expect from the Scottish justice system, so I reject the suggestion that to oppose his freedom to return to Libya is to lack compassion. Scotland has shown compassion from day one.

My first concern is with the decision. On 27 August 1998, the UN Security Council demanded that Libya give up Mr al-Megrahi for trial. It was backed by the Organisation of African Unity, the Organisation of the Islamic Conference, the Non-Aligned Movement and the League of Arab States. They did so on a written promise from the UK and the United States that any sentence would be served in full in the UK and there would be no return to Libya if guilty.

That agreement—that solemn undertaking and reassurance for the families of the dead—has been disregarded by the justice secretary and others and our words will never mean the same again. We Scots have been trusted the world over and our justice system has been admired for centuries but, in one decision, that reputation has been damaged and tarnished for years to come.

My second concern is with the handling. All Governments mishandle matters from time to time but, in this case, the mistakes and the misjudgments have been systematic and significant in every respect. In particular, the justice secretary and the Scottish Government should have met the families face to face. The videoconference was insulting. It did not even cover adequately the possibility of compassionate

release and correspondence afterwards from the families apparently received no reply.

The justice secretary should not have met the convicted prisoner—a Libyan secret service agent trained to manipulate and mislead. He has set a dangerous precedent and, in doing so, he has made our system look like a joke.

Those who disregard the families of the dead so eagerly should think for just a moment how we might feel if the murder had happened in another way. Let us imagine 270 Scots burned to death and blown out of the sky from a plane above France. The French authorities, with international assistance, bring accused persons to court in France. They are tried under French law. The French Government promises the Scottish Government in a letter to the United Nations that, if convicted, the accused will spend their entire sentence in France and will not be returned to Libya. One is found guilty. He appeals. His appeal is heard again under French law, but it fails. He serves eight years of a 27-year sentence. Then the Government of France changes. A new justice minister agrees to meet the convicted mass murderer but does not meet face to face with the Scottish families of the dead. Then the terrorist is freed to return to Tripoli, met with French flags and hailed as a hero. How would we feel in those circumstances?

It is now too late to change the decision made by the current Scottish Government, but it is not too late for the voice of the people to be heard through this Parliament. We owe it to the victims, their families and our country to make it clear that this mistake does not have the support of the nation as a whole.

10:47

Patrick Harvie (Glasgow) (Green): Last week's session was less confrontational and aggressive than I feared it would be, so I was going to begin my contribution by expressing some disappointment in the tone of the debate, but Elaine Murray and Jack McConnell have done something to improve the tone. I hope that the rest of the debate on both sides follows their example.

I am disappointed that it looks likely that we will divide along party lines. I suspect that everybody in the room knows that there are members in all political parties who support the decision that has been made and members in all political parties who oppose it. I will say something about the decision and then comment on my concerns that our debate still has the wrong focus.

It has been acknowledged that the decision has been difficult. Last night on television, even when saying that the decision shamed Scotland, Richard Baker acknowledged that it was a difficult one. I

disagree with his view, but I am concerned that he is a little unclear about his feelings. It is hard to accept that the decision can be simultaneously finely balanced and difficult, and a cut-and-dried one that is a matter of shame.

My reason for supporting the decision is respect for the principle that compassion is not simply an optional extra; it is a necessary part of justice. Punishment is not the same as retribution. When a man is facing death in a matter of months in a foreign prison, which ours are to Mr al-Megrahi, further punishment becomes a meaningless concept.

Robert Brown: Is Mr Harvie aware of the requirements for the legal consideration of compassionate leave applications, not least that the type of offence and other matters be taken into the balance? Does he not think that that is one of the aspects that have been singularly missing from some of the discussion about this matter? Is compassion absolutely unlimited?

Patrick Harvie: I do not say that compassion is absolutely unlimited; I say that it is the most meaningful act of compassion when it is the hardest to express.

I also disagreed with Iain Gray's comment last week that compassion is marked in our system by the existence of parole, appeals or the lack of executions. Those are not markers of compassion; they are the bare minimum for a justice system to be worthy of the name.

I respect sincerely the force of Elaine Murray's contribution in asking us to empathise with the feelings of the victims' relatives. I cannot imagine how they feel, nor can I imagine how it feels to be facing death in a foreign jail still protesting one's innocence—none of us can imagine that. Justice for none of those parties will be served by mere retribution. Justice is not served by double standards in our differing treatment of one dying man and the Government that he served, which is currently being rehabilitated by the UK and other Governments.

Margo MacDonald: I also respect the comments made by Elaine Murray and Jack McConnell. However, does Patrick Harvie agree that there is more than a legal dimension to the decision that was taken and that the needs of the global population now, compared to the interests of 20 years ago, have also to be weighed in the balance?

Patrick Harvie: I certainly agree that the global and political implications cannot be separated from this. However, I would not argue that the Cabinet Secretary for Justice should have made a decision in one direction on the other on the basis of the likely reaction of America, Libya or the wider

world. The decision had to be made on its own terms.

However, there is a far bigger issue to consider. The location of Mr al-Megrahi's death will soon become a footnote of history—a fact of history. If we choose to close the chapter there, without ever examining the doubts that exist, which are widely held, about the safety of the original conviction—as distinct from the man's guilt or innocence—we will effectively bury the truth. The UK Government seems happy to do just that. Such an act can never serve justice—the abandonment of truth can never serve justice or the perception of justice. Doubt about the conviction is not the ground on which the decision for release was made, nor should it have been—I understand that.

Jack McConnell asked members to consider an alternative scenario and I will do the same. I ask members to consider a scenario in which one of their constituents was being held in a foreign jail, in Iran or Syria. If their conviction had been so caught up in international politics and diplomacy, if their conviction had been secured on the basis of such circumstantial evidence, if it later appeared that at least some of that evidence was from a key witness who had been paid millions of dollars by a foreign Government with an interest in the case, is there a single member of this Parliament who would not strain every sinew to secure the release of their constituent on whatever grounds they found possible?

If Parliament today fails to recognise either the shades of grey in this case or the information that still remains in shadow, shame on us.

10:53

Christine Grahame (South of Scotland) (SNP): I add my support for the Cabinet Secretary for Justice in his decision to release Abdelbaset Ali al-Megrahi on compassionate grounds. As many have said, it was a tough decision and, as a former lawyer, the cabinet secretary is well aware that it will be scrutinised with subsequent applications for compassionate release. That is why it had to be scrupulous. In my view, it is one of the few scrupulous actions in the entire Lockerbie tragedy. I believe that the decision was made with integrity, in contrast to the murky international deals that go right back to the night of 21 December 1988 and which continue to this day. Megrahi was, and in my view remains, a geopolitical pawn.

For me, compassionate release was the way forward not only because the criteria would be met but because it would have preserved that crucial appeal process. Mr Megrahi's priority was to be with his family, including his elderly mother, but he was also determined to clear his name not just for

himself and his family but for those victims' relatives who believed that they had seen justice done but who had been deceived all those years. The closure that they sought had been bought at the cost of truth. I say to Bill Aitken that I stand by my e-mails, but I note that Mr Megrahi himself has said that he was not pressurised. I can say no more.

Remember that the appeal process had not been exhausted. With the abandonment of Mr Megrahi's appeal, the first-stage findings will not now be published—findings relating only to evidence previously led, not the evidence that was unheard and untested, nor the grounds by which the Scottish Criminal Cases Review Commission came to the view that there may have been a miscarriage of justice. The SCCRC report, which was produced two years ago, found that Megrahi was not in Malta at the time that the prosecution averred and he could not be connected to the purchase of the clothing that camouflaged the timer device. It found that the identification by Gauci the shopkeeper in a line-up was also challengeable, given that, just four days previously, he had seen a magazine photograph of Megrahi with a caption that linked him to the Lockerbie bombing.

Neither of those two crucial facts was in the hands of the defence and, therefore, they had never been tested in court. The key evidence of identification, if led, would surely have cast more than a reasonable doubt on the conviction. Incidentally, why, on a recent edition of "Newsnight", did Lord Fraser—the Lord Advocate at the time—call Gauci the shopkeeper "an entirely reliable witness" when, in 2005, he described the same man as

"not quite the full shilling"?

What of the contents of the US intelligence cables dated September 1989, which were confirmed in recent statements by the Central Intelligence Agency's former case officer Robert Baer, and which stated that the bombing of the Pan Am flight was conceived, authorised and financed by the former Iranian minister of the interior and that the execution of the operation was contracted to Ahmed Jibril of the Popular Front for the Liberation of Palestine-General Command for a sum of \$1 million?

I understand Elaine Murray's angst. Some relatives of the 270 whose lives were ended so brutally—many but not all of them are in the USA—cannot live with Megrahi's release, which I understand. However, compassionate release is not predicated on innocence. Indeed, by its very nature, it must be predicated on guilt. However, it is my contention that with a full public inquiry, comprising, say, an international panel, the truth

would out. Perhaps then for grieving families the release of Megrahi would be more palatable.

What questions would we put to such an international panel? If Megrahi was not the purchaser of the clothing and was wrongly identified as part of the plot, who were the real perpetrators? Why were there no criminal prosecutions following the shooting down of the Iranian Airbus by the USS Vincennes in 1988—five months before Pan Am flight 103 exploded over Lockerbie? Was there a contract issued by the Iranian authorities to the PFLP-GC to take revenge for the death of 290 Iranian pilgrims, 60 of whom were children, by bringing down an American plane bringing its pilgrims home for Christmas?

Why have the US authorities not queried the true identity of Basel Bushnaq alias Abu Elias, a senior figure in the PFLP-GC at the time of the bombing and nephew of Ahmed Jibril, former head of that terrorist organisation? Basel Bushnaq currently resides in Washington DC and is in the employ of the schools division.

Did the fragment of circuit board, which was crucial to the Libyan connection, leave Scotland in the temporary custody of US authorities? Lord Peter Fraser has said that he did not know about that.

Why was the break-in at Heathrow next to the Pan Am luggage station on the morning of that flight never examined in court?

It is my hope that some of those grieving, angry relatives, who are grieving for lost lives and futures and who are understandably bitter and angry at the compassionate release of a man they believe committed a heinous crime, will take those questions and pursue answers that so many have sought to conceal for so long.

10:59

Michael McMahon (Hamilton North and Bellshill) (Lab): It has been pointed out, this morning and in other places, that the writing on the Scottish Parliament's mace includes the word "compassion", reflecting one of the principles that should guide our deliberations as MSPs. However, in a timely reminder, the Rev David Cameron said this morning that the words "wisdom", "justice" and "integrity" are also engraved on the mace, indicating the range of qualities to which we, as elected representatives, should aspire. However vital it is, compassion cannot be and is not enough. Given all the values that are written on the mace, Mr MacAskill has no right to claim that he had to release Mr al-Megrahi to return to Libya. In his misguided desire to show that the SNP treats the values of Scotland as its personal property—rather than to show that we are a

compassionate country—he abjectly failed to follow due process and ignored the fact that alternative options were available if the Scottish Government had only had the wisdom, the sense of justice and the integrity to pursue them.

Alasdair Allan: Talking of wisdom, Nelson Mandela said recently that he sincerely appreciates the decision that Kenny MacAskill made—a view that, we now learn, appears to be not dissimilar to the view of the UK Government. Does the member believe that Mr Mandela is mistaken?

Michael McMahon: Yes, I do.

Instead, what we had from Mr MacAskill was an entirely predictable situation. The Government created the circumstances that allowed the Libyan regime to embarrass our country as it jubilantly welcomed home a convicted bomber with Scottish flags. There is no point in Christine Grahame or Patrick Harvie trying to retry the case this morning—that is totally irrelevant to the fact that Mr al-Megrahi was released as a convicted bomber. The sight of saltires being waved on the tarmac at the airport in Tripoli has shamed Scotland, and it will take years for us to recover from the harm that has been done. We should make no mistake that the Scottish Government's decision has damaged Scotland. The fact that that outcome was abundantly foreseeable indicates that Mr MacAskill was lacking in wisdom.

There was a clear case for providing Mr al-Megrahi with compassion, but allowing him to be welcomed back to Libya as a free man should not have been the option that was chosen. Palliative care standards in Scotland are of the highest anywhere, and such care can be delivered in a variety of settings. Hospice care does not have to be provided solely within the confines of a hospice building. If Greenock prison was found not to be a suitable location in which to deliver the care that was required, a suitable secure location should and would have been found elsewhere in Scotland had the matter been properly considered.

We are required to ensure that justice is served to those who harm others—not retribution, nor vengeance, but fair punishment for the crime that has been committed. I firmly believe that Mr al-Megrahi was entitled to have the best care possible in his illness but, given the fact that he served only 11 days in jail for every victim of the Lockerbie bomb, I do not believe that Mr al-Megrahi was yet entitled to clemency.

Equally important was the need for integrity in deciding whether compassionate release was warranted. Unfortunately, the entire handling of Mr al-Megrahi's release has been typified by media briefing, leaking and spin from the Scottish Government. Honesty and truth have been lost in

the decision-making process in this case. As has been pointed out, the Scottish Government has, among other things, misrepresented the medical evidence. Even more serious, it has manipulated the opinion of Strathclyde Police to create the impression that keeping Mr al-Megrahi in Scotland but outwith prison was not a viable option.

There is also the matter of Mr MacAskill's bizarre reference to the involvement of "a higher power", by which we must presume he means God. The Cabinet Secretary for Justice claimed that his decision to show compassion was made on the basis that God had intervened to inflict a terminal illness on Mr al-Megrahi. I hope that I would never be so arrogant as to claim to have more compassion than anyone else. I would certainly never claim to have more compassion than God. It is offensive to suggest that a person who develops cancer has had it inflicted upon them by God for some crime. It is also unworthy of a Scottish Government minister to make that suggestion merely in order to send an ill-judged message to a stereotypical demographic across the Atlantic. I do not know what "higher power" Mr MacAskill believes in, but I am confident that my God is not such a callous one.

It is important to me that Mr al-Megrahi was seen to be treated with humanity, and it is absolutely right that he should be allowed to see out his days with the dignity that was not afforded to the 270 people who died when Pan Am flight 103 was brought down. Mr MacAskill may argue that his decision was based on compassion, but it should also have been a wise, just and honest one—it was not. The Scottish Parliament must now try to repair the damage that has been done, and MSPs must do all that they can to make it clear that the decision was not made by the people of Scotland and that it certainly does not have their endorsement.

11:05

David McLetchie (Edinburgh Pentlands)
(Con): My remarks will follow on from some of the comments and observations that were made by Michael McMahon in his fine speech.

When Tony Blair was Prime Minister, he was asked by a journalist what part his faith played in the decisions that he reached. Before he could answer, his spin doctor, Alastair Campbell, intervened and famously said, "We don't do God." It is and was well known that Tony Blair is a sincere and devout Christian—a fact that has been borne out in his actions subsequent to standing down as Prime Minister, including his conversion to Catholicism and the establishment of his faith foundation. Mr Blair is a man who takes his faith very seriously, for which he deserves our respect. The purpose of Alastair Campbell's riposte was to

make it clear that, when it came to the business of government, however, decisions were made on a strictly secular basis. Both Tony Blair and Alastair Campbell were acutely aware of the dangers of mixing religion and politics.

I had thought that such a strictly secular approach to government had been generally adopted by all major political parties. That had certainly been my experience in 10 years of the Scottish Parliament. Therefore, imagine my surprise—like that of Michael McMahon—when Mr MacAskill called in aid the existence of "a higher power" to justify his decision to release al-Megrahi. Until that moment, I was wholly unaware that belief in the existence of such a higher power was an integral part of the Scottish justice system. I was particularly surprised that Mr MacAskill should invoke that higher power because only four years ago, in an interview that was published on the Scottish Churches Parliamentary Office website, he stated that he did not have any personal faith.

Be that as it may, let us look at the characteristics of Mr MacAskill's "higher power". Here is what he told Parliament:

"Mr al-Megrahi now faces a sentence that has been imposed by a higher power. It is one that no court in any jurisdiction, in any land, could revoke or overrule. It is terminal, final and irrevocable. He is going to die."—[*Official Report*, 24 August 2009; c 18996.]

Mr MacAskill's "higher power" is not the God of love, mercy and compassion about whom we can read in the Bible, the Qur'an or the Torah. On the contrary, as Mr McMahon pointed out, Mr MacAskill's "higher power" is a God of vengeance who visits disease and affliction on sinners here, on earth. That strikes me as a very harsh doctrine that is straight out of the Glen Hoddle school of theology. Members may wonder why Mr MacAskill invokes a higher power of that nature in the context of the al-Megrahi decision. I suggest that it is because he wants to contrast vengeance from on high with his compassion here, on earth—an attitude that many would regard as a presumptuous heresy.

I do not regard Mr MacAskill as having a monopoly of compassion in the matter. His responsibility is to marry compassion with justice; to respect the judgment of the Scottish courts that found the man guilty of the murder of 270 people; and to respect the memory of al-Megrahi's victims and the promises that were made to their families.

Margo MacDonald: Will the member take an intervention?

David McLetchie: No, thank you.

The cabinet secretary claims that the Government regrets the reception that was received by Mr al-Megrahi on his return to Libya. It was a matter over which the Government says

that it had no control. Well, it did—it did not have to let Mr al-Megrahi go in the first place.

Since the decision was made, the basis for it has been undermined day by day, as further information has come to light. Some people have questioned the medical evidence, which raises the prospect of a rather ghoulish and distasteful death watch over Mr al-Megrahi for the next three months or perhaps longer. Others have asked why, if he were to be released from prison in his final days, as happens in the case of other terminally ill prisoners, he could not be cared for here, in Scotland. It is clear that that aspect was never considered properly by Mr MacAskill. The idea that Strathclyde Police could not spare 48 police officers to provide an appropriate level of security is a nonsense. As Bill Aitken said, this is the same police force that provided security at Glasgow royal infirmary for 34 days for the Glasgow airport bomber before he died from his injuries.

Moreover, as Mr al-Megrahi's Libyan lawyer said, his client could have been cared for in Scotland. He said that the standards of palliative care in Libya are lower than those in Scotland, and that terminally ill Libyans come to this country for treatment and care—how ironic.

We could have had a judgment that blended mercy and justice. We could have had a judgment of Solomon; instead, we got a judgment of MacAskill. That judgment is a miscarriage of justice that shames Scotland.

11:11

Jim Hume (South of Scotland) (LD): In terms of this case, we have heard much about compassion over the past month and, of course, today. I believe that there was never any doubt that we as a nation have compassion. As I have said previously, and as the Rev David Cameron and other members said earlier, at the core of the Parliament are the words in the inscription on the mace: “wisdom”, “justice”, “compassion” and “integrity”.

Like others, my main compassion at the moment goes to the families of the victims and people of Lockerbie who have long made it clear that they want to move on from that awful night nearly 21 years ago, but who are again reminded of their nightmare. My premier thoughts are with them. Like Elaine Murray, I agree that Mr MacAskill should have thought to visit the people of Lockerbie to seek their views.

The Lockerbie incident is the most horrific to have happened in Scotland, with 270 innocent lives unjustly taken just a few days before Christmas. We have to be clear: the debate is not about Mr al-Megrahi's innocence—Miss Grahame

was mistaken in pursuing that argument—but about the events that led to the Cabinet Secretary for Justice's decision. The affair raises several concerns about that process, including Mr al-Megrahi's decision to choose to meet the Cabinet Secretary for Justice. The cabinet secretary met him—indeed, he said that he was “duty bound” to do so—but what precedent has he set in making the visit? Can all prisoners now claim their right to be visited in prison by the Cabinet Secretary for Justice? If so, he will be a busy man indeed, not least in replying to the mail that will be involved in such requests. How many such requests have been submitted thus far, cabinet secretary?

Like others, my concern extends to why the press were so well informed, not only about the visit but about the release date. Mr MacAskill has stated clearly that he was acting in a quasi-judicial manner. Like Robert Brown, I have never heard of a judge or jury—never mind a justice minister—meeting a convicted prisoner before they make a judicial decision and, having done so, briefing the press.

On 24 August, in response to a question from Brian Adam, Mr MacAskill said in this chamber:

“Costs are not a factor that we take into account in the implementation of our justice system.”

Earlier that day, he said in his statement that the advice from the deputy chief constable of Strathclyde Police was that

“a minimum of 48 officers would have been required simply to allow Mr al-Megrahi to live in Scotland. I therefore ruled that out as an option.”—[*Official Report*, 24 August 2009; c 19010, 18995.]

However, the same police force stated subsequently:

“If a decision had been made to release Mr al-Megrahi in Scotland, we would have provided whatever security was required.”

The cabinet secretary has said that that any suggestion that he did not consider seriously release into Scotland is “ludicrous”. However, Strathclyde Police's statement raises doubts in that regard. Is it not ludicrous for 1,000 police officers to be deployed for one old firm game? After all, security for Mr al-Megrahi was required for only an estimated three months. A release into a Scottish hospice could have been imposed. Mr al-Megrahi's family could easily have visited him there and his release conditions could have been monitored. That decision would have shown true compassion and justice could have been monitored. How can Mr al-Megrahi's release condition of a monthly videoconference be controlled now that he is far out of the reach of our jurisdiction?

I turn to the medical advice, on which subject only time will tell. In pictures of Mr al-Megrahi, we

see him being treated. I wish no ill on anyone. Equally, no one should lose the most precious gift of life. As I said, time will tell; perhaps time will also judge.

It is regrettable that the appeal process was halted. Many questions could have been answered, including questions on Mr al-Megrahi's innocence and the matter of justice for victims if he was found innocent. In the Government summing up, I ask for a full assurance that the dropping of the appeal was no bargaining chip for release.

The decision that we are debating was for the Cabinet Secretary for Justice to make. That said, he is responsible to the Parliament. The Liberal Democrat request for a recall of Parliament to debate the issue in advance of this unprecedented decision should have been granted. It was a mistake for that recall not to be made. On 24 August, I pressed Mr MacAskill to say whether he had supported our call for a debate.

Flurries of papers are now being published in an attempt to dam the flood of criticism. If the cabinet secretary had made the announcement on release to Parliament and answered questions, the Government would have avoided much of the criticism. I regret that the process of release has raised so many questions. As I said, yesterday saw the hurried publication of papers and letters. According to the interview that the First Minister gave to the BBC, all documents have been published, but we have not yet had sight of transcripts of the discussions between the Governments. I remain to be convinced that all the options on Mr al-Megrahi were fully explored. If that had been the case, we would be certain that, as our Parliament's mace says, we had seen the use of wisdom, justice, compassion and integrity.

11:16

Tricia Marwick (Central Fife) (SNP): I start with the premise that Mr al-Megrahi is guilty. I do so because a Scottish court returned that verdict. Until the verdict is set aside, he will die in Libya a guilty man.

Like others, I have been wrestling with the concepts of justice, mercy and vengeance. I have struggled to understand why our friends in the United States are angry and hurt that our Cabinet Secretary for Justice agreed compassionate release for Mr al-Megrahi. They fail to understand Scotland's legal system.

As I pondered what to say today, I came across a speech by Martin Luther King. In life, Martin Luther King was not the icon that he became in death. He opposed the Vietnam war at a time when it was not popular in the United States to do that, and was vilified for doing so. A few days

before his assassination, in reflecting on the choices that he had made, he said:

"Cowardice asks the question, 'Is it safe?' Expediency asks the question, 'Is it politic?' Vanity asks the question, 'Is it popular?' But conscience asks the question, 'Is it right?' There comes a time when we must take a position that is neither safe nor politic nor popular, but because our conscience tells us that it is right."

Expressions of humanity and justice towards our fellow human beings do not always make easy and popular decisions. Where an individual or group has wronged us, it is often easy to deny their humanity instead of conceding that they are—as we are—human and mortal. Mercy is in the hands of those who give it. It is an expression of our values and humanity, regardless of the actions of those who receive it. Compassion is about being better people and not about the goodness or wickedness of the person who is on the receiving end of the mercy.

There is nothing that any of us can do to ease the pain of those who mourn those who died at Lockerbie. Mr al-Megrahi's death, whether in a prison in Scotland or at home in Tripoli, will not lessen the pain, which will endure always. Our legal system demands justice, not vengeance. If Mr al-Megrahi were to die in a Scottish prison, that would be vengeance, not justice.

Some have claimed that the release means that Mr al-Megrahi served only 11 days for every person who was murdered at Lockerbie. However, even if he had served the remainder of his life in Greenock prison, only a quarter of a day would have been added for every person who died. Mr al-Megrahi is dying. His body is ravaged by cancer. He will die, and he will die soon.

Kenny MacAskill freed Mr al-Megrahi on compassionate grounds, despite the grave crime for which Mr al-Megrahi was convicted. That was done not to minimise the suffering of victims' families, here and in other countries. The decision to release a dying man had at its heart justice and mercy—two intertwined principles that are woven into the fabric of the Scottish legal system. Those principles are the foundation of our society, and those who would scoff and sneer at those values do all of us in Scotland a disservice.

Without the option of mercy and compassion, there can be no true justice. It is vital that the distinction between justice and mercy is uppermost in our minds, because vengeance is rarely just, it is never merciful and it breeds only further resentment and hate.

When the Cabinet Secretary for Justice took the decision to release Mr al-Megrahi to die at home, it was not cowardice that asked the question. It was not expediency that asked the question. It was not vanity that asked the question. It was conscience

that asked the question, and the answer was that it was right.

11:20

Dr Richard Simpson (Mid Scotland and Fife) (Lab): All members who have spoken have made one common point, which is that the decision whether to release Mr al-Megrahi was a difficult one. Indeed, most public comments have made the same point. I object to the fact that some Scottish National Party members have consistently indicated that anyone who criticises any part of the decision or the process that led to it is lacking in compassion. I find that offensive. Those members have no particular cloak of compassion.

I want to concentrate on two areas in which I feel that, in the process of reaching his decision, the cabinet secretary was misguided and failed in his duty to the Parliament, to the people of Scotland and, most important, to the victims of the Lockerbie atrocity.

From time to time, it falls to ministers to make very difficult decisions. The visit to Greenock for a face-to-face interview, and the way in which that was brought about, was completely misguided. Civil servants give advice and spell out options as far as they can, but, at the end of the day, the consequences are for the justice minister to determine. We now know from the correspondence that has been published that it was not Mr al-Megrahi who sought that face-to-face meeting but the justice secretary and his department, who wrote to Mr al-Megrahi offering him a face-to-face interview.

When I was a justice minister, I received a request to meet Paddy Hill, one of the Birmingham six, who had just set up the Miscarriages of Justice Organisation. My civil servants advised me that such a meeting was not a clever move and that I should not meet Mr Hill—a man whose appeal had been upheld and who had been found not guilty. I chose to disregard the civil servants' advice. However, they gave me some helpful additional advice, which was that I should ensure that the agenda for the discussion was clear and did not include cases that were pending, and that I should check who Mr Hill was bringing with him. I followed that advice, and found out that Mr Hill was going to bring with him a Mr TC Campbell, whose appeal was pending. I did not need the further advice of the civil servants to tell me that meeting someone whose appeal was pending was inappropriate for a justice minister. I have seen nothing in the correspondence to dissuade me that Mr MacAskill failed in that regard. No face-to-face interview was held with the victims' families, so claims of natural justice are unacceptable.

I turn to the medical evidence. Ian McKee talked about old warhorses—which probably describes me and him—sniffing the air. The issue is not about what will happen to Mr al-Megrahi. I wish him no ill. I hope that the consequence of his release to Libya, misguided as it was, will be the extension of his life. According to the published reports, it is likely that that will happen. The psychological aspect of his condition was referred to again and again in the summary provided to the justice minister by Dr Andrew Fraser.

I hope that Mr al-Megrahi, who I understand is embarking on further chemotherapy, will live for some considerable time. However, whether Mr al-Megrahi lives or dies within the three months is not relevant here. What is important is whether the justice secretary, acting on behalf of the Scottish people and the Scottish justice system, sought the medical evidence that allowed Mr al-Megrahi to meet the conditions of release, which were that it was likely that he would not survive more than three months.

In September 2008, the experts' general view when pressed—they had to be pressed—was of a mid-estimate survival time of around 18 to 24 months, although they could not be certain. In June and July, when Mr al-Megrahi's condition was discovered to be hormone resistant, the experts were asked again for their opinion. That opinion was that Mr al-Megrahi's expected survival time was at the lower end of their estimate. If we do the mathematics, that means eight months. In other words, the experts gave advice in June and July, on the basis of all the evidence presented to them—which may or may not have included face-to-face examination—that Mr al-Megrahi was likely to survive for eight months. However, within a week of his application for release on compassionate grounds, a single medical officer indicated to the prison medical adviser that Mr al-Megrahi's condition had deteriorated. I am not surprised that it had deteriorated. Considering the meetings with the cabinet secretary and the issue of having to give up the appeal that he desperately wanted to continue with in order to deal with his guilt, Mr al-Megrahi must have been under enormous pressure. His deterioration was to be expected.

If I had been the justice secretary, that is the point at which I would have said, "I want independent corroborative evidence that the conditions have been met." I would have wanted the experts to have a face-to-face review of all the evidence. On the basis of three independent reviews, from a cancer specialist, a palliative care specialist and Dr Fraser—whose evidence and report I do not question, having been given to the cabinet secretary in good faith—the expertise would have been available and the cabinet secretary could have said in front of members, "I

have taken advice from a sufficient weight of medical expertise to allow me to say that this man has met the conditions for compassionate release.” I do not believe that the cabinet secretary did that. Therefore, on the basis of those two grounds in particular, his decision was wrong.

11:27

Shirley-Anne Somerville (Lothians) (SNP): The cabinet secretary Kenny MacAskill made the decision to release al-Megrahi for the right reasons, following due process—he met the criteria for compassionate release, which is a well-established principle of the justice system in Scotland. The timetable is clear. The evidence is clear. The reasons are clear. Agree with it or not, this was a quasi-judicial decision and one in which economic, political and diplomatic arguments have, quite rightly, played no part.

There has undeniably been anger at the decision, not least from some in the United States. The angry, emotional reaction is understandable given the horrific crime for which al-Megrahi was imprisoned. I, too, was deeply upset by the scenes of welcome on his return to Libya.

Hugh O'Donnell (Central Scotland) (LD): My view of the release is a matter of public record. However, does the member agree that it was naive in the extreme for the cabinet secretary, given the culture that pertains throughout many of the eastern Mediterranean countries, to expect that the receipt of al-Megrahi back to Libya would be greeted any other way than it was?

Shirley-Anne Somerville: What would have been naive—and incorrect—would have been for a justice secretary to take anything like that into account. The decision was quasi-judicial and was not one based on public relations exercises.

While much of the focus of attention has been on the negative reactions in the US to the decision, there has always been support for the justice secretary internationally. I quote from the *Irish Examiner*:

“al-Megrahi ... has blood on his hands but it is difficult to understand what is to be gained—other than revenge—by keeping a dying man behind bars. Equally, it would be unwise for anyone, American or Libyan, to confuse mercy with weakness.”

The Times of India said:

“While the condemnation, particularly from those who lost family members, is understandable, the decision is a difficult but correct one ... Justice is not the same as revenge or retribution.”

According to the *Frankfurter Allgemeine Zeitung*:

“To relieve a seriously ill prisoner is an act of humanity”.

There have been a number of personal statements from international figures—one of the

most recent was from Nelson Mandela—and contributions from retired senior diplomats, such as the former United Kingdom ambassador to Libya Sir Richard Dalton, who called the decision “difficult” but “right”.

The release of al-Megrahi on compassionate grounds to die in Libya has caused hurt to many Americans who have been affected by the atrocity for which he was imprisoned. Arguably, it has placed our relationship with the US under strain. However, the ties that bind Scotland and America will endure. The foundations of our friendship have been built over the centuries, and they will not be destroyed by a single decision, even one as painful to some as this one. It is in the nature of friendship to respect each other's right to make their own decisions, even ones that we strongly disagree with.

Margo MacDonald: If the decision that the cabinet secretary took was outwith the realms of political, economic and diplomatic interests, can the member explain why the head of the Federal Bureau of Investigation should pass comment on the legal decisions that the cabinet secretary took? Are the two things not intertwined?

Shirley-Anne Somerville: I think that he was wrong to make such judgments on the Scottish legal system. One of the few comments that we have had from the Prime Minister—or at least his spokesperson—was that this is a matter for the Scottish justice system. The FBI director's comments were far from appropriate.

US tourism is important to Scotland. I was therefore pleased when VisitScotland's regional director for Edinburgh and east central Scotland confirmed to me on Monday that

“we work with well over 4000 travel agents in the US, all of them selling Scotland. There is no evidence of widespread cancellations and we continue to receive bookings from US visitors.”

Johann Lamont (Glasgow Pollok) (Lab): Will the member take an intervention?

Shirley-Anne Somerville: I have to make some progress.

Concerns have been expressed about future bookings from the US, but we should not allow that to become a self-fulfilling prophecy. Now is the time for politicians to stop prolonging the pain of the decision for political gain. Although it is perfectly valid to disagree with the justice secretary's final ruling, or to question the process in Parliament, as we are doing today, some contributions from Opposition members over the past few weeks have been far less valid—they have been reactionary and opportunist, and they have been based more on personal attacks than on principled parliamentary scrutiny. In their regrettable rush to damage the SNP, a disservice

has been done to the Scottish criminal justice system that ultimately will be far more damaging to Scotland in the long term.

Even if I were to accept that Scotland's reputation has been tarnished by the decision—which I do not—we should be clear about where the Opposition's argument takes us: to a judicial system that is sullied by political interference, where we administer justice by focus group and where we announce decisions not after following due process but after a quick phone round our trading partners. We have seen a glimpse of such a system south of the border, where only last year the High Court described the Serious Fraud Office's decision to drop a corruption inquiry into a billion-pound Saudi arms deal as “an outrage”, stating that the SFO and Westminster Government had given in to “blatant threats” from trading partners. That is not an example that I would like our country to follow.

By standing our ground and staying true to our values we enhance, rather than damage, the international reputation of our country. For my part, I am pleased to have this opportunity to reaffirm my support for the justice secretary, someone who does what he believes to be right and is prepared to bear the consequences, who does not base judicial decisions on a potential economic or political backlash, and who does not change his mind when the going gets tough.

The Deputy Presiding Officer (Alasdair Morgan): As we are running late due to various factors, and as no end time for the debate was specified in the business motion that the Parliament agreed to, I will not conclude the debate at 12.30; I will run it on somewhat. However, that is not an invitation to any member to exceed their allocated speaking time.

11:34

Mr Frank McAveety (Glasgow Shettleston (Lab): I hope that that was not directed at me, Presiding Officer—it may well have been.

The question today is not about the crude brutality of everyday politics; it is about how we, as a Parliament that is representative of the people of Scotland, feel about the judgment that was made by the minister and the Scottish Government on the release of al-Megrahi. Many arguments will be deployed, here and beyond the chamber, about the background information, the release of information and the interpretation of that information. What concerns me, however, is not just the judgment that the minister made but the way in which he made it and presented his statement last week. He conflated Scottish values of justice and humanity, yet he did not address the

fact that a justice system is measured not by its clemency, but by the justice that it administers.

The starting point for me is not one of party-political advantage—I am just offended by the justice minister's decision. Many people in my constituency have expressed the same opinion. Individuals have also expressed the contrary opinion, as we have heard in the chamber today. The starting point for me has already been eloquently described by other members: it is the scale of the act that was carried out, the nature of that act and the responsibilities that we have towards its victims.

As members, we solemnly made an agreement on behalf of Scottish justice that while mercy should be displayed to the individual responsible, he needed to serve his sentence.

The minister said that he could not consider releasing Mr al-Megrahi to a prison in Libya, but in the same sentence he concluded that it would be okay to release Mr al-Megrahi to his family in Libya. We come to the essential tone of the debate. Am I lacking compassion if I say that I do not agree with that? I recognise that he may well have been released in any event, but following a considered process, and then being protected here in Scotland with his family having the right to deal with him.

We have a hierarchy of compassion. I disagree with Michael Matheson on the question of considering the level of the crime before deciding about questions of compassion. We do not have that, but we need to arrive at some measure to reach conclusions on compassion.

This is not a game of equivalence, where we say, “I met you, so I must therefore meet him in similar circumstances.” I do not think that Mr al-Megrahi has the right to demand that, because of the scale of the offence that he carried out. That is my fundamental difference with Mr MacAskill. I believe that the families should be of paramount importance.

References have been made to some theological positions. It was not me who introduced that to the debate but the minister, with the allusions in his statement to the media about compassion, mercy, humanity and the ways in which we judge people. We have a conflation of the values of the Old Testament and the New Testament—of the essential proclamation of compassion and love. That is a tough question. Many of us who have been brought up in a Christian tradition or in other faiths have to deal with that in our everyday lives. However, they are not the same models. The reading of the New Testament is utterly different from that of the Old Testament, and we need to reconcile the two in the debate.

Patrick Harvie: Those of us who do not come from a religious perspective have to grapple with those issues, too. For clarity, I do not condemn as compassionless anyone who disagrees with the decision. It is understandable that, on a finely balanced and difficult decision, we will reach different judgments. Does Mr McAveety not agree, however, that the way in which such decisions are reached should be codified in law? In the law, there is no explicit rejection of specific types or scales of offence in respect of the decision that justice ministers make—

The Deputy Presiding Officer: This intervention is a bit too long, Mr Harvie.

Mr McAveety: I believe that I argued that very point in my opening comments.

Where I am trying to find equivalence is in our responsibility as a Parliament to the victims and their families. They have not had the same rights of representation as other people involved in the deliberations. In this tragedy, the individual who was convicted by Scots law was given more consideration and more personal time by our minister of justice, in our name, to maximise the chance of his release—it is understandable that the individual sought that.

I ask the simple question: if this decision is the most important that has ever been taken by a Scottish minister since the Parliament was established in 1999—and I think that it is—it would have been given more resonance and value if the cabinet secretary had taken more time to meet the families of the victims directly, face to face, and particularly those from the United States. It would take no less than 24 hours to travel there and back. It would take one day to carry out genuine, face-to-face engagement with the families.

We then arrive at the essential issue as I understand it from what the minister said: the concept of compassion. I accept that people who are not religious might not accept all of what I am about to say, but we can only ever have compassion when the quality of mercy that can be savoured is a measure of the repentance of the individual. That is what I understand to be the meaning of compassion. We make a judgment based on that.

I do not think that the families have been treated at all fairly, and the minister has not acted in my name or in the name of the people of Scotland.

11:40

John Lamont (Roxburgh and Berwickshire) (Con): As members have said, it is important that we do not forget the horror that unfolded on the night of Wednesday 21 December 1988. I will certainly not forget being told by my father, as he

collected me and my brothers from the school Christmas disco, that a plane had come down in the small Borders town of Lockerbie. When we arrived home, the television news showed the flames licking around the homes on Sherwood Crescent.

As a 12-year-old, I could not have imagined the horror of what happened to those poor souls as they fell from the sky. Although the passengers would have lost consciousness through lack of oxygen, forensic examiners believe that some of them might have regained consciousness as they fell to lower altitudes. One forensic scientist told Scottish police that he believed that the flight crew, some of the flight attendants and 147 other passengers survived the bomb blast and might have been alive on impact. None of those people showed signs of injury from the explosion itself or from the decompression and disintegration of the aircraft. For many days, Lockerbie residents lived with the sight of bodies in their gardens and streets as forensic workers photographed and tagged the location of each body, to help to determine the exact position and force of the on-board explosion.

Mr al-Megrahi was convicted of that horrific crime on 31 January 2001 and was sentenced to life imprisonment. We should not forget that fact.

The Scottish Government and others, most notably in the BBC, have stated that most of the Scottish families affected were in favour of Mr al-Megrahi's release on compassionate grounds. While it is correct to say that the small number of family members who have chosen to speak out are indeed in favour, it is important to record that most people in Lockerbie would prefer to keep their counsel and say nothing. It is therefore wrong to misrepresent the views of those who were so horrifically affected by the events of 1988. Saying nothing is not the same as agreeing with the release of Mr al-Megrahi.

The debate has been useful in that it has allowed members to explore ideas in depth. That was not possible during the questions that followed the ministerial statement last week. More questions have been raised since the statement was made, particularly in light of information in the documents that were released yesterday. I hope that the First Minister will use his closing remarks to answer some of the many key points that remain unanswered. For example, why did Mr MacAskill reject the option of keeping Mr al-Megrahi in Scotland, when the police had indicated that they would deal with him if required to do so, and given that Mr MacAskill said that cost was not a consideration? Did the Scottish Government know that a UK Government minister had suggested that the Prime Minister did not want Mr al-Megrahi to die in prison? Did the

cabinet secretary or his officials leak to the *Sunday Post* or the BBC the story that Mr al-Megrahi was to be released several days before the official announcements?

I find it bizarre that Prime Minister Gordon Brown has been unable to say what he thinks about the ruling on Mr al-Megrahi, when so many people in other countries have commented on the Scottish Government's decision. He can find time to write a glowing eulogy for an American senator, he can comment on the death of reality TV celebrity Jade Goody and he can take time out to appear on "American Idol", but he cannot find time to comment on the release of the only man to be convicted of the worst terrorist attack on British soil. The decision has international ramifications and Gordon Brown should be more forthright and honest about what he thinks.

The cabinet secretary has made much of the fact that it was for him to decide whether to allow Mr al-Megrahi to go free. He has said on numerous occasions during the past two weeks that the decision was his alone. Of course it was legally the decision of the cabinet secretary; I do not dispute that he was the man who was permitted in law to make the decision. However, we need to know more about the motivation behind Mr MacAskill's final decision. I think that most members think that the decision was wrong and that Mr al-Megrahi should not have been released. For that reason, the Salmond Government has not done enough to prove that its decision to release that mass murderer was based on sound evidence and advice.

11:44

Malcolm Chisholm (Edinburgh North and Leith) (Lab): I acknowledge the strongly held and sincere views on both sides of the debate and I believe that genuine respect should determine the tone of our proceedings today.

This is unlike any other debate in the past 10 years, not least because we are dealing with a quasi-judicial decision by the Cabinet Secretary for Justice rather than with a Government decision. As such, it was a decision that should not have been influenced by political considerations or indeed by what might or might not happen to al-Megrahi when he returned to Tripoli.

People have speculated on the cabinet secretary's motivation and we have heard a lot of nonsense about the UK Government influencing the decision. For my part, I take the cabinet secretary at his word and can see no other credible explanation for his decision, which was entirely consistent with sound Scottish legal principles and with compassion, which is a fundamental part of the Scottish legal system.

Some people have been shocked by my praise of the cabinet secretary last week. However, I think that 99 per cent of the public and more would be shocked and bewildered by a political culture that ruled out such praise. I am certainly not ashamed of holding the same views as Nelson Mandela on this or any other matter.

Whatever anyone thinks about the cabinet secretary's motivation, his decision was certainly not based on populism, given that widespread opposition could be anticipated. What has taken me aback and surprised many others is the strength of support for the decision, as I have seen for myself in scores of e-mails, letters and comments from constituents and others during the past week. Opinion is far more evenly divided on the issue than some people think is the case. It is divided internationally and it is even divided among the victims' families.

Ted Brocklebank: Does Malcolm Chisholm agree that even for those who are convinced of Mr al-Megrahi's guilt, it might be preferable in certain circumstances to release a guilty man to spend his last three months with his family than to risk the possibility of an innocent man being left to die in a foreign prison, for a crime he might well not have committed?

Malcolm Chisholm: I hope that Mr Brocklebank will have the opportunity to develop in a speech that point, which bears out my point about divided opinion among all sections of the population: at home, abroad and among the victims' families. As members said—Elaine Murray most eloquently—we all feel sympathy with the victims' families, but we must acknowledge that there is division even among the families. We all know the sincerely held and eloquently expressed views of Jim Swire on the matter.

In the decision-making process today, we ought to recognise that there is division among all the groups that I mentioned and among political parties. There have been many polls, of which the most recent said that 39 per cent of Labour voters approve of the decision. I know for a fact that many ordinary members of the Labour Party support the cabinet secretary's decision, and some of my party members have communicated directly with the cabinet secretary, without any intervention from me, to make that clear.

In recognising that the decision was different from other Government decisions, and indeed was not a Government decision at all, it is entirely appropriate that there should be a free vote today, but irrespective of whether there is a free vote, I will be voting with the Government.

11:48

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): Many members have said that the decision was a highly difficult one. That is only the case if the difficulty arises when we struggle to balance competing calls on judgment and conscience. Judgment is the taking into consideration of the wider public interest, the views of victims and the possible consequences—political or personal—of a Government decision.

The decision is not difficult if, from the outset, we hold the moral position that no one should die in a prison cell in Scotland. I understand the argument that Tricia Marwick and other members made, but if it is to hold it must be an absolute principle. If that were the case, the situation would have been straightforward as soon as the application was made: the decision would have been taken shortly after the application was received and the Scottish Government would not have countenanced a negative decision.

Perhaps a more difficult issue is how we in the United Kingdom or in Scotland alone normalise our relations with a former pariah state while maintaining the solemn undertakings that Jack McConnell eloquently outlined. The British Government has been struggling with that for the past decade. I doubt very much whether the Scottish Government has a different policy from it and would not seek normalised relations with Libya.

For the past five years, I have pressed the Parliament to debate end-of-life issues and what is meant by compassion. We are asked for compassion in that context when a person who is coming towards the end of their life wishes to have greater power over their life. I have been told repeatedly by ministers of different parties and by the churches that compassion is not an absolute, that we cannot simply accede to someone's wishes because they are dying and that we must set aside what we think may be a compassionate response because of a potential for greater harm to society. For five years, I have been told that the individual does not define compassion themselves.

I understand the argument that has been put, even though I do not hold to it. However, in regard to the case, the prisoner and the Government decision that we are debating, many speakers who disagree with my view that the Government made the wrong decision say that I lack compassion or that the argument on compassion must be absolute. I understand the Martin Luther King quotation absolutely but, in my view, it has not been applied equally, consistently or fairly in other debates about end-of-life issues.

Tricia Marwick: The criteria on compassionate release have been applied absolutely and fairly to every person who has met them. If they have been applied fairly and consistently by justice ministers present and past, it would be wholly wrong to make an exception for al-Megrahi, because that would be a political decision.

Jeremy Purvis: The member misses the moral point. She talks about the criteria; is the criterion that someone who is dying is asking to go home to die? That would be any prisoner who was coming to the end of a terminal illness, so it would be an absolute position. The point is that, in the law that applies to Scotland, when we prosecute, we do so in the public interest. It is not a matter of an individual making an individual decision of conscience to prosecute; the Lord Advocate prosecutes in the public interest. The decision on compassionate release is made by a minister in the public interest.

Margo MacDonald: Can we divide the public interest in the legal sense from the public interest in the social, political, diplomatic and economic sense?

Jeremy Purvis: My point is that we cannot. That is why, at the outset, I said that it is not simply about the difficult decision on the individual release, but about the difficult decision that we all have to face, in a mature way, on our relations with former pariah states.

I hope that Tricia Marwick will engage in similar debates on end-of-life issues and hold the same view on consistently acceding to the views of dying people in Scotland.

Tricia Marwick rose—

Jeremy Purvis: I do not have time to give way to her, although I would have liked to.

I respect the views of people who differ passionately from me, but I prefer not be lectured on the compassionate view that I need to hold simply because it is stated Government policy. If that is the policy, I wish compassion and mercy to be applied equally when it comes to the other difficult choices that the Parliament should face. A month ago, I wrote to the Lord Advocate asking what the position in Scotland would be if a terminally ill person sought permission to go to Switzerland to die or, indeed, if someone helped such a person to do so. I have not received a reply to that letter.

If the Parliament is debating the morals and ethics of Mr al-Megrahi's case, let us be consistent in our approach to compassion, mercy and how we deal with our citizens in all other end-of-life issues.

11:55

Angela Constance (Livingston) (SNP): Like many members, I have my own barometers to test public opinion, whether my mailbag, my inbox or the people I speak to at my surgeries and at meetings with local groups and organisations. Many teachers in my constituency have advised me of the debates that have been held within their classrooms. People have spoken to me at the shops in Livingston shopping centre and I must be candid and say that visiting some of my relatives is akin to attending a public meeting.

Although there are clearly opposing views about whether Mr al-Megrahi should have been sent home to die, contrary to what is reported in the media and by the political classes, I have found there to be calmness in the community. There has been close interest in, and scrutiny of, Mr MacAskill's decision, but calmness nonetheless.

By inclination, I prefer to speak to people rather than refer to opinion polls, but a trend in recent polls has struck a chord with what my constituents have told me over the past few weeks. Before Mr MacAskill made his decision, *The Sunday Times* published a poll that found that 11 per cent of respondents supported compassionate release. However, since the decision, further polls have shown that 32 per cent and 40 per cent support compassionate release and, of course, there is the poll that shows that 56 per cent of Scots do not think that the Cabinet Secretary for Justice should quit. That reflects my experience of a growing understanding among people on the street of why the justice secretary released Mr al-Megrahi home to die.

The television images of saltires being flown in Libya turned many folk against compassionate release. Conversely, the interjections by the United States increased support for the justice secretary. I have also found that there is an informed understanding and critique of UK and US foreign policy as a result of the aftermath of the war in Iraq and the mass opposition to that war. It has not escaped the notice of many that Hillary Clinton recently welcomed a member of the Gaddafi family—the national security adviser for Libya—to Washington saying that she valued the relationship between the US and Libya and the opportunities to broaden and deepen that relationship. The duplicity of doing one thing and saying another is not lost on the general public.

Although we all must accept that we exist in a global geopolitical environment—that is the point that Margo MacDonald has been making—the justice secretary took his decision purely on the law and policy on compassionate release. The decision to send Mr al-Megrahi home to die was taken by the book. The procedures were followed, Mr MacAskill received advice and he considered it

accordingly. He made his decision on the grounds of justice, not politics.

It is significant that the justice secretary received unanimous recommendations from the Parole Board, the medical report, prison social workers and the Scottish Prison Service. Members should believe me that that is not always the case. The grounds for compassionate release were clear—the prisoner had a terminal illness, death was likely to occur soon and the prisoner was incapacitated—but the criterion that interests me the most is the statement that compassionate release would be considered where continued imprisonment

“would, in the light of the conditions in which”

the prisoner

“is being held, endanger or shorten his/her life expectancy.”

Johann Lamont: I am sure that Angela Constance appreciates that many compassionate people do not agree with the decision, although they may acknowledge that it was a difficult one. Does she accept that, if the minister had tested the options for compassionate release within Scotland seriously, those people might have been better able to accept his decision? The problem is that—she can correct me if I am wrong—the compassionate release criteria did not compel the minister to release Mr al-Megrahi to his family abroad; he could have been released to his family within Scotland.

Angela Constance: That rather neatly brings me on to some of the so-called alternatives that have been put forward by the Labour Party and the Conservatives. While standards of health care in prisons are much improved, issues of security and environment mean that prisons are not and cannot ever be a hospice. The suggestion that Mr al-Megrahi could have gone to a hospice is rather disingenuous and offensive because of the adverse impact that that would have had on innocent dying people.

We then go to the Newton Mearns option. We have already heard that that would have required a minimum of 48 police officers, at a cost of £100,000 a week. I know that the Cabinet Secretary for Justice said that costs and financial implications were not part of his decision. However, I also know, from speaking to members of the public in my constituency, that it would not have been well received that, in a tight financial climate, we were spending hundreds of thousands of pounds to protect a convicted criminal.

Michael McMahon: Will the member give way?

Angela Constance: No, thank you.

The Deputy Presiding Officer: The member must conclude.

Angela Constance: I will indeed.

I would have had more respect for Opposition leaders if they had declared their decision on compassionate release prior to that decision being made, as opposed to waiting to see which way the wind blew.

12:01

Paul Martin (Glasgow Springburn) (Lab): I recall watching, as a young man, the events of Lockerbie unfold on 21 December 1988. Like many others in the chamber, I felt genuinely touched by the grief displayed by so many families who were so cruelly affected by the Lockerbie bombing. However, I also remember the dignity that was shown by the victims' families and by those from the Lockerbie community, despite the tragic loss of their loved ones. I also recall the feeling of disbelief at the magnitude of the crime. Many people posed the question why such a peace-loving country would be the victim of such a terrible atrocity.

Political leaders from all over the UK displayed a united front during that period, as we can see when we examine the *Hansard* report of the meeting of the UK Parliament that followed the disaster. It shows that a number of powerful contributions were made. One thing that united all the parties was an appetite for the perpetrators to be brought to justice. Our justice system showed its fairness and compassion by going to considerable lengths to ensure that a fair trial was held. After lengthy negotiations, many of which were led by Nelson Mandela, we finally arrived at a trial in the Netherlands. After 84 days and £75 million in costs, Mr Megrahi was found guilty.

The reason for this preamble is to set out the fair and compassionate approach that was taken by our Scottish justice system when Mr Megrahi was being dealt with.

Christine Grahame: Will the member take an intervention?

Paul Martin: I am afraid that I do not have time. I would like to make another point.

When we are satisfied that we have delivered justice, we should take responsibility for the perpetrator being punished and required to see out his sentence. The Scottish Government has failed the justice system by allowing Mr Megrahi to be released and transported as a free man to a hero's welcome in Tripoli.

Kenny MacAskill has failed to answer a number of simple, straightforward questions today. Why could not Mr Megrahi serve his sentence in a facility that was managed by the SPS? Let us put it on the record that Labour members would not have expected him to arrive at the Marie Curie

hospice in Springburn, but we believe that other options were not given due consideration. The Cabinet Secretary for Justice has failed to demonstrate how he interrogated the options that were before him. The police estimates that Mr MacAskill presented to the chamber have no status or proper scrutiny attached to them. In Mr MacAskill's words, Mr Megrahi is a "dying man". Suggesting that a dying man requires 48 police officers to guard him clearly requires further investigation. I was concerned about the option-appraisal process that was carried out via a telephone call to the assistant chief constable. That was a sloppy manner in which to carry out an appraisal. Did the Government, which is concerned about potential costs, take into account the costs of the hundreds of police officers who were required to police the Faslane 365 protest, which its party took part in? No, it did not.

The evidence that victims were a true part of Mr MacAskill's decision is also open to question. Some 189 of the victims on the Pan Am flight were Americans. Given the grief of their families and the fact that such robust concerns were raised by the US Government, like Jack McConnell and many others I am disappointed that Mr MacAskill sought to engage with the families of the American victims via videoconference. I genuinely do not wish to make a cheap point—this is a serious issue—but, given that ministers are only too happy to cross the Atlantic for events such as tartan week and the homecoming event, why did the cabinet secretary not make that same journey to consult the American political representatives and the families who have been so affected by Lockerbie? To meet Mr Megrahi personally, but the American victims only via videoconference, is to get one's priorities very wrong. Even worse, when we examine the documents that have been made available for the public record, we see that the meeting was at the request of Mr MacAskill.

Many of us were disgusted at the VIP reception that Mr Megrahi received on his arrival in Tripoli. The scenes of a convicted Libyan bomber being welcomed in Tripoli should have been avoided. Although I accept that we cannot control the outbursts of jubilation from the Libyan people, we should have considered how conditions could have been attached to Mr Megrahi's release to ensure that public grandstanding was prevented. We should have considered including provisions dealing with Mr Megrahi's behaviour, given that he is still on licence and is still required to report to East Renfrewshire Council. Surely that message should have been sent out. I ask once again that the Cabinet Secretary for Justice put on record and make available for public viewing the representations that he made to the Libyan Government calling on it to keep its particular homecoming event at a low key.

The First Minister: They were published yesterday.

Paul Martin: They were not published yesterday, so perhaps Mr Salmond can clarify the matter in his concluding remarks.

In conclusion, the Scottish Government has been responsible for a flawed process whereby it has released Mr Megrahi on compassionate grounds. The Government has let the people of Scotland down. I call on the Parliament to support the amendment in the name of Richard Baker.

The Deputy Presiding Officer: We move to the wind-up speeches.

12:07

Tavish Scott (Shetland) (LD): This has been a strong debate, with passionate contributions from across the floor of the chamber: from David McLetchie—although his was more a comic turn for the sketch writers—and from Tricia Marwick, who spoke about values, from Jeremy Purvis, who spoke about morals and, perhaps above all, from Elaine Murray, who was a passionate advocate of the town that she represents.

Nothing that we can do now will bring back those 270 lives. Mr MacAskill has made his decision to release a mass murderer. He made it clear that he absolutely believes in the conviction of al-Megrahi for causing the deaths of 270 men, women and children. Nothing we can do—no vote that we can take, however overwhelming—can bring al-Megrahi back to this country. Mr MacAskill has made his decision. I respect the fact that the decision was extremely difficult. I acknowledge any minister who makes a tough call and I acknowledge Mr MacAskill's courage in making the decision, but we must ensure that all our efforts in the matter serve justice.

People have come to different views on what they think they might have done if the decision was theirs, but none of those opinions—and, certainly, no weight of opinion polls—can turn that decision around. What we can do, and what Parliament surely must do, is hold ministers to account. When they exercise quasi-judicial powers, they exert enormous power over individuals. It is right that ministers are challenged to explain their decisions. That is not party politics but accountable Government. No Government should be frightened of that.

My colleagues have highlighted today, as we did last week and the week before, that the powers used in the decision were judicial but were exercised poorly and in a way that no judge would have entertained. No judge would have briefed the media in advance, as the SNP did. No judge would have briefed television cameras to follow

him to Greenock jail, provided a running commentary on the decision itself and then heightened tension to unbearable levels before making the announcement.

Some may wish to reflect on the feelings of the families of the lost during that time. No Government should have made such a momentous announcement to the basement of St Andrew's house rather than to this Parliament. That was very wrong. We know that the SNP made no effort to contact the Presiding Officer or the other parties to ask for Parliament to be recalled. Had it made such a request, we would have agreed to it gladly. In its handling of the issue, its spin and manipulation, the Government put publicity before responsibility.

It is unfortunate that Mr MacAskill will not close the debate, which means that he will not be able to answer, as he should, the detailed questions that members have asked. His place is to be taken by the First Minister, who is the political head of the Government. Many are surprised that the First Minister will close the debate, not least Mr Michael Russell, who usually gets such slots. Up until now, the First Minister has observed that the decision to release al-Megrahi and the decision to visit him in jail were Kenny MacAskill's decisions alone. Will the First Minister tell us whether he discussed with Kenny MacAskill whether his jail visit was appropriate?

Other questions remain, as many members have said. Why was the UK justice secretary blamed for the visit to Greenock? On *Newsnight* on 20 August, Mr MacAskill was asked why he had gone to prison to visit al-Megrahi. He said that he had had to, because Jack Straw had made it clear that representations should be heard from the prisoner. That was repeated by our First Minister on the BBC news the very next day. However, what was said turns out not to be the case. The policy was made specifically to allow written submissions, so why did ministers allow the media to be told the wrong information? Why did they change their story—as they did—when the written records of the House of Commons showed otherwise?

When he was questioned on his statement last week, why did the justice secretary give the impression to Margo MacDonald and Pauline McNeill that he did not discuss al-Megrahi's appeal on his visit to Greenock prison, when the official note of that meeting shows that he volunteered information about the implication of continuing the appeal? Denying that the appeal was ever mentioned simply casts further doubt on the basis on which al-Megrahi decided to drop his appeal, which many wanted—and still want—to be heard. In response to Margo MacDonald earlier, the minister said that he considered the PTA and

compassionate release together, which again leaves room for doubt. Does not all of that simply confirm that the meeting in jail between a convicted murderer and a justice minister while legal proceedings were live was plain wrong?

It was particularly wrong, given that a similar audience was not accorded to the families. Why did the justice secretary hear representations on compassionate release from al-Megrahi and from the Libyans at eight intergovernmental meetings, when on 1 July he told the relatives of the UK victims that he was not prepared to hear from them on that issue? It does not seem to be due process to deny the families of UK victims the right to make clear to the justice secretary their views on compassionate release.

There are legitimate questions for the UK Government to answer, not least whether the Libyans were told that the Prime Minister and the Foreign Secretary favoured al-Megrahi's release. I do not see what the Prime Minister has to hide. Why does not he speak? If Andy Murray wins the US open, he will certainly speak about that—

The Deputy Presiding Officer: The member's time is up.

Tavish Scott: Many have found the cabinet secretary's decision difficult to understand. We must find ways of coming together as a Parliament to respond to it. The amendments to the motion provide a way of doing so.

12:14

Annabel Goldie (West of Scotland) (Con): The debate has been instructive. We should never forget the genesis of the issue, which Elaine Murray so eloquently described. Members have been offered an opportunity to assert the position of the Parliament, as distinct from the position of the Scottish Government.

I am intrigued by the fact that the First Minister is to close the debate for the Scottish Government because so far he has made it quite clear that the issue is the exclusive responsibility of his justice minister, and that the decision to release Mr Megrahi was Mr MacAskill's decision and Mr MacAskill's decision alone. I find it less than impressive that when it becomes clear that the Labour Party is embarrassed and in trouble, none other than the First Minister is ready to leap to centre stage and return to the fray.

Of course, the SNP is feeling a little less bruised this morning because the Labour Party is now getting it in the neck on this issue. The emergence of the evidence that Gordon Brown told the Libyans that he did not want Mr Megrahi to die in jail is damaging for the Prime Minister, and his

situation is made worse by his stubborn silence since the release decision was made.

However, let us not get distracted. This debate is about Opposition parties calling this Government to account for the decision that it made. In my view, the Salmond Government made a bad decision, and made that decision badly.

For example, it is clear to me that Mr MacAskill gets so upset about the idea of keeping Mr Megrahi in Scotland in secure care because he did not consider that idea as a serious option. Today, he has again failed to answer the question why Scotland's police officers and NHS staff were able to hold the Glasgow airport bombers securely in a Scottish hospital for more than a month but—according to Mr MacAskill—would not be able to do the same for the Lockerbie bomber in his last few days.

Margo MacDonald: Will the member give way?

Annabel Goldie: I am sorry, but I am short of time and have a lot to cover.

I can conclude only that Mr MacAskill had set his mind on releasing Mr Megrahi back to Libya—an impression that is reinforced by the presumption that was clearly established at the meeting with the Libyan Government on 22 July 2009 that, if compassionate release were granted, release would be to Libya.

On the question of process, we must raise the remarkable incident of the meeting between Mr MacAskill and Mr Megrahi. At first, the SNP claimed that the minister had to meet the Lockerbie bomber because Jack Straw's rules required him to do that. Then, the SNP said that they met because Mr Megrahi asked for a meeting. However, we now learn that Kenny MacAskill instigated the meeting, although under no obligation to do so. In my view, that personal engagement was acutely misjudged and profoundly naive. Again, the suspicion lingers of nods and winks and deals.

Despite his claims, Mr MacAskill has not published all the medical advice. It is quite clear that, as Dr Ian McKee indicated this morning, the SNP was given expert advice. If Mr MacAskill is in possession of that expert advice, it must be published. Further, on the BBC's radio programme "Good Morning Scotland" today, Nicola Sturgeon said that all the medical evidence that Mr MacAskill saw has been published. Where is it?

The medical officer's report to Mr MacAskill says:

"we attach relevant medical reports in a sealed envelope".

Where are those reports? Where is that expert

advice? Why has it not been published? Dr Richard Simpson was absolutely right to raise those issues. They are germane to this matter and, so far, there is a huge silence surrounding the import of that medical advice.

Alternatively, is it the case that, as the medical officer also says, no expert is willing to give a prognosis of three months? Once again, the suspicion lingers that this was not a decision that was based on facts, but that facts were found to fit the decision that had already been taken and had already been signalled to the Libyans.

I think that Gordon Brown and Alex Salmond have been engaged in nudge-and-wink diplomacy and that the SNP Government made the wrong decision. It is important that the Scottish Parliament has an opportunity today to express the Parliament's view. As I said last week when I responded to Mr MacAskill's statement, I do not consider that the decision that he made was a decision in the name of Scotland or this Parliament, and it was not a decision that was in my name. That is why my party will today support the Labour and Liberal Democrat amendments. In turn, I ask members to support the amendment in the name of my colleague Mr Aitken.

12:19

Iain Gray (East Lothian) (Lab): Today's debate has—apart from a bad start—been wide ranging and often eloquent. The tone has properly been serious, as we are dealing with a serious issue and a serious decision.

Many have commented on the various issues that surround Mr al-Megrahi's release, but it is important in closing the debate that we return to the issue at its heart. It is now almost two weeks since the justice secretary announced his decision to release Mr al-Megrahi and return him to Libya. I said then that I believed that that was the wrong decision, and that it was reached by a flawed process. Nothing that we have heard during the past fortnight or this morning has convinced me otherwise. I know that others take a different view, and I respect that, but I disagree with them.

Joe FitzPatrick: Will the member explain why he was not prepared to give his views on compassionate release prior to Kenny MacAskill making his decision? When the member was specifically asked, he said that he did not have the medical information and he was therefore not prepared to make his views known.

Iain Gray: That is quite an important question, to which there are two answers. First, I took a view when the medical evidence had been published, so that I was able to—*[Interruption.]* No—it was in response to the statement. It is also the case, however, that I thought through the decision

seriously in exactly the same way that I believe the justice secretary did, and I came to a different conclusion. All the members who have spoken today have acknowledged that the decision was difficult, but that means that the process by which it was reached had to be unimpeachable.

New flaws in the process are emerging every day. The justice secretary took two decisions on the same day: he also rejected the application from Libya under the PTA. I agreed with that decision, and Jack McConnell has made it clear that Labour in Scotland had concerns about the PTA as it was discussed and developed.

However, the consideration of the PTA application was dragged out beyond the recommended 90-day period. There was no reason for that, because the application could not have been granted while not one but two appeals—one by al-Megrahi against his conviction and another by the Crown Office against the sentence—were outstanding.

The First Minister: Iain Gray talks about his concerns over the PTA process. Did he ever make those clear to the Prime Minister?

Iain Gray: Jack McConnell was clear: those concerns were raised by him as former First Minister and as the leader of Labour in the Scottish Parliament. I have not discussed the issue directly with the Prime Minister. Those concerns were raised properly here in the Scottish Parliament.

The issue was compounded by Mr MacAskill's decision to make an unprecedented visit to a convicted murderer in Greenock prison. His justification—that Jack Straw had said that representations must be heard from the prisoner—has proven to be simply false, and a different explanation has appeared every day. However, the documents that were published yesterday made it clear that it was the cabinet secretary who offered to visit the prison and hear representations, as many members, such as Elaine Murray, have quoted chapter and verse to show.

The note of that meeting, which has now been released, reveals no argument that could not have been made in writing to the justice secretary, but it clearly shows that the visit compromised the separate but parallel application for compassionate release and the then on-going appeals. Indeed, when Mr MacAskill was talking about that visit today, he clearly stated that he told Mr al-Megrahi that he was considering the two applications together because that was the most efficient way of undertaking the process. The note reveals that Mr MacAskill raised with Mr al-Megrahi the point that his PTA application could not be granted while his appeal continued. It is

impossible to avoid the conclusion that that ill-advised visit compromised the whole process.

The prisoner transfer application was turned down because Mr MacAskill accepted that the American families of victims believed that they had been promised that al-Megrahi would serve out his sentence in Scotland. I accept that reasoning, and Jack McConnell has explained why, in his view, it is indeed correct.

However, Mr MacAskill has never explained why, if that ruled out transfer to incarceration in Libya, it did not similarly disallow release on licence to freedom in Tripoli. Mr al-Megrahi is still a lifer and is still technically liable to recall. His sentence has not been quashed and he has not been pardoned. There is a glaring logical inconsistency between the two decisions, and it is a cruel inconsistency for those American families in whose name the prisoner transfer application was refused. It could have been resolved by compassionate release in Scotland, but it is clear that Mr MacAskill dismissed that option. It is also clear that Strathclyde Police simply indicated how it would provide security for that option and at no time said that it could, or would, not do so. The option should have been considered.

As many speakers have said, compassion is woven into the fabric of our justice system just as it is inscribed on the mace. That is why we have no death penalty, why we have the right of appeal and then further review, why we have parole, and why we have the right of application for compassionate release. However, David McLetchie was right when he said that compassion is tempered by justice, just as compassion and justice are intertwined on the mace. That is why due process requires consideration of the sentence served and any views of the court on that sentence as well as the medical evidence.

As Robert Brown and other speakers made clear, we have never heard from the justice secretary that he considered any of those factors, nor have we had any indication of how he balanced them alongside the medical evidence. We can only conclude that he failed to give them due consideration. As for the medical evidence, we know that, at best, it is far less clear-cut than we had been led to believe.

The decision was entirely one for Scottish ministers to make. Every document that was released yesterday—even the account of the Libyan minister's statement regarding the Prime Minister and the Foreign Secretary that has Mr Salmond so excited today—made it clear that UK ministers respected the fact that the decision was one for Scotland to make.

I have made my judgment on the decision and the process and I stand by it. I said that the visit to Greenock was unnecessary and I believe I was right. I said that compassion for al-Megrahi had to be balanced against the length of the sentence remaining and I believe I was right. I said that compassion had to be balanced against the enormity of the crime, and the guidance says that I was right. I must admit that I assumed initially that the medical evidence must be incontrovertible and unambiguous, but as it turns out I was wrong about that. On none of those matters has Mr MacAskill convinced the Parliament. The First Minister must address them now. He can use this chance to make the case for his minister's decision or he can use it to make political capital. If he does the latter, it will be because he has lost the argument.

12:28

The First Minister (Alex Salmond): When people in Opposition parties who have clearly been engaged in trying to make political capital out of a quasi-judicial decision appeal to the First Minister not to reply to those points, it betrays a certain degree of nervousness in the argument. For the Parliament, and for Iain Gray in particular, I will try, first, to answer the political arguments that have been made by the Opposition parties. Then let us see if we can get on to the heart of the principle against which the decision should actually be judged.

On the political arguments, I say to Iain Gray that it is not just myself who is excited by the revelations that we heard last evening. He must accept that there is a general excitement throughout the press corps this morning. The argument is not, incidentally, that the Foreign Secretary and the Prime Minister did anything wrong by revealing to the Libyan Government, through the foreign minister, that they did not want Mr Megrahi to die in a Scottish prison. There was nothing wrong with that. What is wrong is that Labour in Scotland, either knowing or not knowing about that, lodged an amendment attacking the justice secretary.

In order to identify that point, we have to know whether Iain Gray, the Labour Party or their spokesmen knew about the views of the Prime Minister and the Foreign Secretary when the amendment was lodged. When I asked Richard Baker about that, I got no answer whatever. However, because of newspaper deadlines, there was an answer in this morning's *Scotsman*. Before Bill Rammell and then the Foreign Secretary clarified the position, a spokesman for Iain Gray said:

"This is a third-hand claim made by people who told the world the Queen and Prince Andrew were dancing in delight over the release of Megrahi."

In other words, a spokesman for Iain Gray rubbished the claim. We now know that the claim was true and, in that light, we have to ask at what stage the Labour Party will accept that by pursuing an attack on the Cabinet Secretary for Justice it is guilty of monumental double standards on this issue.

Tavish Scott raised a number of questions. Like most people, he accepted that the decision was difficult for the cabinet secretary. I believe that there is a range of views across the political parties on this issue, and I have noted the comments of Lord Steel of Aikwood, Charles Kennedy and David Owen, who have been associated with very prominent positions of responsibility in the Liberal Democrat Party.

Tavish Scott: David Owen!

The First Minister: I apologise to the Liberal Democrats for mentioning David Owen—I realise that I have gone into forbidden territory. Nonetheless, we should accept the point that people of substance agree, on balance, that Kenny MacAskill made the right decision.

Tavish Scott also raised the visit to Greenock prison. Let us talk about the issue directly. This was a unique circumstance. For the first time, a prisoner transfer agreement was to be examined without the explicit consent of the person concerned. That is why representations had to be made. Those representations could either be in written form or made directly; it was Mr Megrahi who elected to make them directly. The cabinet secretary accepted that point on advice because he had met directly everyone else concerned with the application, and not to meet Mr Megrahi directly would have put the cabinet secretary at risk under the rules of natural justice and therefore at risk of judicial review. The point is clear, whether people agree with it or not.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): I have a very simple question. Why did the First Minister's Government ministers mislead Parliament into thinking that this had all been legally set down in agreements between Libya and the UK? Why did they not inform Parliament that the meeting was arranged as a result of an invitation and a letter from the cabinet secretary's department?

The First Minister: Megrahi was offered the choice of making his representations directly or in writing, and chose to make them directly.

Events on this story are moving quickly. I should tell the chamber that the Prime Minister has spoken on the issue and has said:

"I respect the right of Scottish ministers to make the decision."

That is a direct quote from the Prime Minister. I hope that we will now start to see respect from across the chamber.

Robert Brown: Will the First Minister give way?

The First Minister: I am just about to come to Annabel Goldie.

Last night, I watched a spokesperson on television who had been asked about the position of Peter Fraser describe him as a lone voice in the Conservative party. He might be a lone voice—or indeed a lonely voice—but he is not actually alone. Incidentally, I point out that he was Lord Advocate during the Lockerbie proceedings, so perhaps he should be called to attention.

Peter Fraser is not a lone voice in the Conservatives; he is supported by John Corrie, who knows a great deal about the Lockerbie case. Moreover, other Tory interventions in the case—for example, representations made to Mr MacAskill by a Tory MP who said that Mr Megrahi should be used as a bargaining chip and comments by Lord Trefgarne, a former Conservative minister, who said that the issue should be part of a commercial and political process—were not helpful to a judicial decision. Throughout the process, Kenny MacAskill quite rightly maintained that the matter had to be decided in the justice system and under the laws of Scotland.

Mike Rumbles: Will the First Minister explain why he announced to the world that, at the infamous meeting with Mr Megrahi, Mr MacAskill never discussed the appeal dismissal? It now appears from the documents released yesterday that he not only discussed it, but emphasised the point.

The First Minister: As a statement of a fact, I say to Mike Rumbles that, if he looks at article 3(b) of the prisoner transfer agreement, he will see the conditionality—that legal proceedings have to be ended before a decision can be made. The prisoner transfer agreement was opposed consistently, openly and publicly by the Scottish National Party right through the process of the past two years.

Apart from that conditionality, what was wrong with the prisoner transfer agreement? Because of the context in which it was first negotiated, whatever the truth of the matter, people would always say that the agreement was linked to trade and oil, security or getting Libya back into the international community and that it was not based on the processes of justice. That is what was wrong with the prisoner transfer agreement. It would also have breached undertakings that were given, which Jack McConnell spoke about. To uphold the principles of Scottish justice, what really mattered was to go through the due

process. The justice secretary had to take account of the medical advice and the advice of the Parole Board and the Prison Service, and make a difficult and challenging but brave decision, consistent with the legal processes of Scotland.

I come to the international reaction and the reaction in Scotland. I agree with Malcolm Chisholm on two grounds. First, he is absolutely right that, above all, members throughout the Parliament should vote on the motion in a free vote. Secondly, opinion is divided, but I am proud and happy to have the support within Scotland of the Church of Scotland and Archbishop Mario Conti of the Catholic Church; I am even prouder to have the support of Nelson Mandela, which Malcolm Chisholm mentioned, and which indicates the respect across the planet for a Scottish judicial decision.

12:37

Meeting suspended until 14:00.

14:00

On resuming—

Diageo (Task Force)

The Presiding Officer (Alex Fergusson):

Good afternoon. The first item of business this afternoon is a statement by John Swinney on progress on the Diageo task force. The cabinet secretary will take questions at the end of his 15 minute statement. Therefore, there should be no interventions or interruptions during it.

14:00

The Cabinet Secretary for Finance and Sustainable Growth (John Swinney):

I want to make a statement about the work that the Scottish Government and its partners are undertaking to respond to Diageo's announcement of significant job losses in the west of Scotland.

I acknowledge the valuable support that East Ayrshire Council, Glasgow City Council, Scottish Enterprise, the trade unions and local elected representatives have provided for developing and maintaining a strong partnership approach to reverse the Diageo proposals. In doing so, we have been united by the need to safeguard employment and protect communities in already economically fragile areas.

On 1 July, Diageo published the outcome of its internal review, "Global Supply Scotland". It set out proposals for the consolidation of its packaging operations from three sites to two, which would result in the closure of the Kilmarnock packaging plant, with the loss of around 700 jobs by the end of 2011; the closure of its Port Dundas facility in Glasgow and the adjacent Dundashill cooperage, with the loss of a further 140 jobs; and £3 million of investment in its packaging plant at Shieldhall, which would result in the loss of a further 30 jobs. The Diageo consolidation warehouse in Hurlford was to be transferred to a third-party logistics company—64 warehouse employees would transfer. Despite frequent engagement between Scottish Enterprise and Diageo on a range of individual projects, and requests for progress updates on how the company was developing the intended review, Diageo chose not to advise either Scottish Enterprise or the Scottish Government in advance on the nature and scale of the proposals.

That was a matter of real regret. On many occasions, companies approaching restructuring discuss the issues with Scottish Enterprise and the Scottish Government and seek advice and co-operation. Those approaches are always—I repeat, always—treated with great care and in the strictest confidence. Nobody from Government, or the unions, or the elected representatives at

council or parliamentary level had any prior warning of changes in employment. The loss of 900 jobs in the west of Scotland, particularly in the current economic climate, represents a body blow not only to the individuals who are likely to be affected, but to the wider community and local economies.

An independent assessment of the impact of the proposals has been conducted by EKOS for Scottish Enterprise and East Ayrshire Council. It will be published shortly. It has been estimated that the closure of the Kilmarnock plant will take £15.5 million annually out of the local economy, based on the loss of income from employees and losses from local suppliers, investment expenditure and eliminating support to local charities. EKOS has estimated that the cost to the public sector for every job loss is initially £10,000 to £20,000 per annum. Those are telling figures that demonstrate the scale of Diageo's contribution to those communities and the devastating effects that its actions would have on them.

The scale of those impacts made the announcement one that demanded an immediate response. East Ayrshire and Glasgow already have unemployment levels that are above the Scottish average. Further job losses, particularly on such a scale, will be devastating to the whole community as well as to those individuals who are directly affected.

The Scottish Government was therefore quick to act. The First Minister had a very early discussion with Diageo's senior management. He expressed our concern at the proposals and our dissatisfaction with the way in which the announcement had been made. We believe that the scale of the announcements demanded early engagement with the Government to allow legitimate community concerns to be raised and alternative proposals to be considered.

In his meeting with Diageo on 2 July, the First Minister asked the company to reconsider the options available to it regarding the Kilmarnock site and to share information in its business plan with the Scottish Government to allow us to consider and work to develop realistic alternatives. In the immediate wake of the announcement, I also took the opportunity to meet Diageo and visit the key sites in Kilmarnock. Following that meeting, I met East Ayrshire Council representatives, Willie Coffey MSP and Des Browne MP to identify immediate action and address the concerns. I also visited the Port Dundas site in Glasgow and met representatives of the plant's management and of the relevant trade unions.

The First Minister and other ministerial colleagues, along with colleagues across the

political spectrum, have given active support to the East Ayrshire save Johnnie Walker campaign, which has generated significant support from around the world. The website has attracted hits from 68 countries so far, and the save Johnnie Walker march that took place on 26 July attracted more than 20,000 marchers. That is a telling example of how the campaign has attracted widespread support in Scotland and beyond. It has also attracted cross-party support among politicians in Scotland and Westminster.

The early discussions between Paul Walsh, the Diageo chief executive, and the First Minister identified a willingness by Diageo to consider an alternative proposal, which we have worked quickly to develop. Kilmarnock is not the only location to be affected—local impacts would be felt in the city of Glasgow at the Port Dundas facility—so it was essential for us to ensure that a united front against the Diageo proposals was established and to develop alternative but practical proposals.

To manage that process, I have brought together a task force that I chair, which is made up of local authorities in East Ayrshire and Glasgow, trade unions, our enterprise agencies and local elected representatives, to develop a single response that is in the best interests of Scotland. That approach has helped us to marshal our efforts to deliver a coherent and concerted campaign. I acknowledge the effectiveness of East Ayrshire Council in creating a remarkable international campaign that aims to highlight the contribution that Kilmarnock and Scotland have made historically, and still make today, to the Johnnie Walker brand image. The campaign has been extremely well supported. I am informed by the council that it expects to obtain 100,000 signatures for its petition.

As part of the work of the task force, we have commissioned an external analysis of the Diageo business case and potential alternative proposals. A draft report was submitted to the task force on 19 August and is currently being revised in the light of the task force's comments. A number of areas were identified in which further consideration and clarification were required, particularly around the size of potential gaps between Diageo's original proposals and the alternatives that we have been developing.

At its meeting on 25 August, the task force identified a set of proposals that include the development of a new bottling facility on a greenfield site in Kilmarnock and the continuation of production activity at Port Dundas. The First Minister has outlined the proposals to Paul Walsh, and I will meet Diageo tomorrow to consider how we take them forward. Our intention is to produce

a solution that not only suits Diageo's business needs but is in Scotland's best interest.

In our work since 1 July, we have recognised that Diageo's proposals would have a positive effect in Fife. I have ensured that Fife Council has been kept fully informed about the development of our work throughout the process, and that none of our actions jeopardise existing jobs in Fife.

In that context, it is worth stressing that our work to reverse Diageo's decisions has nothing to do with trying to tell a successful global company how to run its business. The issue has been, and will continue to be, safeguarding those economically fragile communities that are at risk in the west of Scotland. The 900 existing jobs in the west of Scotland matter not only to the individuals concerned and their families but to the wider community.

I fully recognise the value that 400 prospective jobs would have in Fife. For me, the issue is not to play one part of the country off against another. I believe that Diageo has a responsibility to those communities that have contributed so much to the company and its profits over generations, and which have fully supported the success of the world-renowned Johnnie Walker brand.

The current economic climate is difficult for all sectors of the economy. Since 1 July, further job losses in the whisky sector have been announced at Whyte and Mackay, which plans to lose 83 jobs across Scotland. That is very different to the situation at Diageo, as the proposed job losses are spread across the country and are not focused on a relatively small geographic area with a narrow industrial base.

On 26 June, the Scottish Government set out its national food and drink policy, "Recipe for Success", which identified a range of actions that would be taken to promote the food and drink sector in Scotland, a country that is renowned for its reputation as a land of distinctive, high-quality food and drink.

In the wake of the Whyte and Mackay announcement, the GMB union made a helpful suggestion to the Government that we should host a whisky industry summit. We are working with a range of interested parties to consider how that suggestion can most successfully and usefully be taken forward. The whisky industry is a successful industry employing many across Scotland and creating sizeable wealth. We want to work with the industry and others to maximise opportunities for its long-term future and profitability.

I would like to reiterate my recognition of the contribution that many people have made in our united campaign to reverse Diageo's proposed restructuring and to obtain a solution that is in Scotland's best interests.

We have set out a framework of proposals that we believe are deliverable in our collective interest and are about to start negotiations with Diageo. I welcome the united cross-party support for this campaign and the recognition that Diageo's proposals require to be changed to ensure that they are in this country's best interests.

I look forward to meeting Diageo tomorrow and working with it to achieve a solution that is in the best interests of the workforce, the company and Scotland as a whole. *[Applause.]*

The Presiding Officer: I point out to those in the public gallery that, however tempting it is to do so, they should not applaud or otherwise contribute to the business before Parliament.

The cabinet secretary will now take questions on his statement.

John Park (Mid Scotland and Fife) (Lab): I thank the cabinet secretary for letting me have an advance copy of his statement.

I would also like to put on record my admiration of the work that has been undertaken by the shop stewards, conveners and full-time trade union officials—many of whom are in the public gallery today—who have been involved in the campaign to save jobs in Diageo across Scotland. The support of politicians from all parties and of the wider Scottish public has sent a positive message to workers in this company.

I am sure that the cabinet secretary will agree that this has been an avoidable summer of uncertainty for workers at all Diageo's Scottish plants.

Diageo has been held up in the recent past as an example of best practice in industrial relations. The previous constructive approach that was taken by the management and trade unions has helped the company to compete in the global marketplace, has secured employment and has made the company extremely profitable. However, in its handling of the decision that was taken at the beginning of the summer, it has damaged that reputation and its relationship with the trade unions. I firmly believe that much of the uncertainty would have been avoided if Diageo had involved the trade unions at the beginning of the decision-making process as opposed to the end of it.

With that in mind, and given the Scottish Government's direct involvement in this campaign, will the Government now, as part of its wider economic approach, be actively encouraging all businesses to engage with trade unions and other workplace representatives before making decisions of the nature and scale of the one that we are discussing?

The main concern of parliamentarians will always be for the workers and their families. Their views have been articulated in a responsible way by the GMB union and Unite every step of the way.

Will the cabinet secretary ensure that, whatever steps the Scottish Government takes following its meeting with Diageo in the next 24 hours, it is recognised that this is a trade union-led campaign that is seeking to maximise employment across Scotland, and will the Government support 100 per cent whatever approach the trade unions decide to take?

John Swinney: I agree that this has been an avoidable summer of uncertainty for the workforce.

Throughout this process, and in the immediate aftermath of the announcement, I spoke to a range of figures in the trade union movement, including the general secretary of the Scottish Trades Union Congress and representatives of Unite and the GMB union. We have had excellent co-operation from the trade unions in our efforts. As he always does, Mr Park made a strong case for the need for active dialogue between business and trade unions.

In my discussions with trade unionists on the issue, I have encountered no unwillingness to contemplate changes to working practices or operational approaches at the plants. In fact, the trade unions have, during our dialogue, been able to marshal many examples of how they have—as Mr Park suggests—contributed constructively to improving the performance of the company through changes in working practices. I have no doubt that the trade unions would be similarly prepared to undertake such commitment in any future endeavours.

I will, of course, continue to work with the trade unions, as I believe the Government has demonstrated that it has been doing during the past few months.

Derek Brownlee (South of Scotland) (Con): I thank the cabinet secretary for the advance copy of his statement. I am sure that members on all sides of the chamber, whichever area they represent, recognise the significant impact that the Diageo proposals could have on the economy of the west of Scotland.

The cabinet secretary's statement was somewhat lacking in detail, which may well be because of the looming meeting with Diageo; I would be grateful if he could indicate whether that is the case.

Is the Government considering using public funds to support employment in the west of Scotland? If so, what criteria will it use to assess any proposals made on that basis?

John Swinney: I thank Mr Brownlee for his question, and record my appreciation—and, I am sure, East Ayrshire Council's appreciation—of Annabel Goldie's presence at the event in Kilmarnock at the end of July.

Mr Brownlee makes a point about the detail in my statement. I hope that Parliament will understand that I wish to engage in a dialogue and discussion with Diageo about the detail of the alternative proposals. I have given the headline summary to Parliament today; underpinning that is a great deal more detail that will be discussed in full with Diageo.

The question about public money is rather material to the discussions that I will have with Diageo. I understand members' concerns about the appropriate use of public money, but in any circumstance in which public money is used for such an investment, clear rules on contributions must be followed to comply with the European Commission's state aid rules and a variety of other matters.

If the original Diageo proposals take their course and lead to an economic impact of the scale that I set out in my statement, as is likely to be the case in parts of Glasgow and in the Ayrshire area around Kilmarnock, public funds will have to be used to pick up the pieces. In this instance, I am trying to encourage a private company to work with the Government to avoid a situation in which public funds will have to be extensively used to pick up the pieces as a consequence of an industrial change that is, in the words of Mr Park, entirely avoidable.

Robert Brown (Glasgow) (LD): I thank the cabinet secretary for advance notice of his statement, and I welcome the campaign and his work in support of it.

There are two strands to this totemic issue. The first is the location of the bottling facilities and how that pans out; and the second relates to the closure of the long-standing Port Dundas distillery in Glasgow. I appreciate the limitations in this matter, but will the cabinet secretary assure me that when he meets Diageo, the Scottish Government's efforts will take equal account of the implications for Shieldhall and Port Dundas along with Kilmarnock? Can he shed any light on the detail of the case that is being made for Port Dundas distillery against Diageo's view that there is substantial overcapacity in Scotland in grain whisky distilling?

We are all aware of the job losses and the effect that they will have on the local and regional economies. Is there yet not just a polite willingness on Diageo's part to talk, but an actual basis that it has accepted for discussion of alternative plans? Can the cabinet secretary shed some further light

on what the Scottish Government can bring to the table in that regard?

John Swinney: Mr Brown raises two distinct points. On the bottling plant, we can bring to the discussion an extensive amount of work, which has principally been undertaken by East Ayrshire Council, and which has fed into the preparation of the alternative business proposals that we put to Diageo. Those proposals essentially examine specific sites in the Kilmarnock area and set out a basis for making the capital investment that would be required to ensure that such a bottling plant could be established. That detail will be set out in the business case.

The Port Dundas issues are slightly more complicated because the size of the market for grain-distilled product is clearly a point of debate, discussion and analysis. As I understand it, Diageo has opted to withdraw from supplying third parties with grain-distilled product. That is clearly a market decision, which fuels the company's sense of and estimates of the capacity of the operation. We think that there are significant uncertainties around the estimates that Diageo has made of the capacity for grain-distilled product. That is evidenced by market analysis that is clearly and freely available in the marketplace. On that basis, we think that there is an opportunity for continued production to be undertaken at Port Dundas. That will form the core of the proposition that we put to Diageo.

Willie Coffey (Kilmarnock and Loudoun) (SNP): Does the cabinet secretary share the horror that was felt by the workers in Kilmarnock and Hurlford on 1 July when Diageo announced its closure plans, putting 700 people in my constituency out of work? Can he reassure the workers that the Scottish Government is taking every possible step, and quickly, to persuade Diageo, in the light of its £2.5 billion profit announcement, that there is no justification for its proposal, which will have devastating social and economic consequences?

John Swinney: I certainly hope that the people of Kilmarnock and Ayrshire are aware of the contribution that the Government and its partners have made to try to take an alternative course. There has certainly been extensive engagement on the issue by the First Minister, by me, and by our representatives, both among Government officials and within Scottish Enterprise. As I acknowledged in my statement, there have also been willing contributions from the trade unions and the relevant local authorities. I assure Mr Coffey and his constituents that their concerns have been uppermost in ministers' minds as we have tackled a situation of which we had no prior notice and that we have used our time over the summer to try to remedy it. We will continue with

our efforts to try to ensure that Diageo takes a different course to the one that it plans.

Patricia Ferguson (Glasgow Maryhill) (Lab): The cabinet secretary is aware of—indeed, he rehearsed today—the impact that the loss of the 200 jobs at Port Dundas would have in my constituency. I know that he is also aware that it would bring to an end almost 200 years of distilling on the site. I have two brief questions. First, will the Scottish Government bring forward a debate in parliamentary time on the Diageo proposals so that the Parliament can demonstrate its support for the workforce by means of a vote? Secondly, does the cabinet secretary believe that Diageo has made the case for the closure of the Port Dundas operation? If not, will he make it clear in his discussions with Diageo tomorrow that pre-empting the continuing consultation by advising workers as recently as last Friday that Port Dundas will definitely close is neither helpful nor appropriate?

John Swinney: On Patricia Ferguson's first question, she will realise from her extensive parliamentary experience that I cannot pre-empt a Parliamentary Bureau decision on a debate, but I assure her that the Government will bring to the bureau a proposal for a debate on the Diageo proposals in Government time.

On her second point, I made it clear in my statement that the Government would have preferred it if Diageo had taken an entirely different approach to handling the matter, starting with consultation before any announcements were made, whatever their content. Again, from Patricia Ferguson's experience as a minister, she will know that the Government regularly receives representations from companies that are looking to reorganise. I assure her that such approaches are taken very seriously by the current Administration, as they were by our predecessors. They are dealt with carefully, with sensitivity, and certainly in private.

Such an approach would have helped to resolve some of these questions long before any public announcements were made and long before we reached the point at which members of the workforce have been advised that a final decision has been taken even as we are in the process of actively looking at alternatives. I hope that we can make progress on the consideration of those alternatives, and my efforts are focused on achieving that.

Bob Doris (Glasgow) (SNP): Companies such as Diageo must strike a balance between, on the one hand, reducing their cost base and maximising their profits and, on the other, treating workforces and communities with the same respect that the Port Dundas workforce have already shown by exercising wage restraint in the

belief that such a move would safeguard their jobs. Does the cabinet secretary agree that, in order to secure a future for Port Dundas, Diageo must strike that balance and that, if the plant receives even a short-term reprieve, ways of reducing cost bases such as the £1 million a year that it pays in charges to Scottish Water should be considered constructively?

John Swinney: Over the past 12 months, we have seen plenty of examples of the corporate world having to strike an appropriate balance between the necessity of making returns and managing costs, and the necessity of properly looking after employees' interests and the general public interest. The Government is acting in this way on this issue because I do not believe that the proposals are properly in balance.

As for the specific cost issues at Port Dundas that Mr Doris has highlighted, the company must be able to operate these plants and make appropriate cost decisions. Equally, however, public utilities have to charge for their business. That said, I hope that in my discussions with Diageo we can explore the relevant issues to ensure that we can take a different course on this question.

Cathy Jamieson (Carrick, Cumnock and Doon Valley) (Lab): The cabinet secretary is well aware that Diageo is the world's biggest drinks company and that £2.5 billion has been made on the back of Scottish workers, including many of my constituents. At lunch time, I joined fellow Unite members and MSPs in signing a pledge to support the Johnnie Walker workers. I know that the cabinet secretary is due to meet Diageo and I genuinely hope that the meeting goes well but, on the basis of evidence so far and despite all the protestations and campaigning against this decision, the company seems set on pressing ahead with its plans to slash 900 jobs. Given that, is the cabinet secretary able to give us some more detail about the specific actions that the Scottish Government can take if tomorrow's discussions with Diageo do not reach any conclusion?

John Swinney: I acknowledge that many of Cathy Jamieson's constituents will be affected by this decision, but I have to say that the Government can take companies only at face value. Senior members of the Diageo management team have assured me and the First Minister that they will seriously consider our alternative proposals. We will concentrate on that and, as I have said, my efforts have been focused on that work.

I have to say that I have not given any particular consideration to what might happen if Diageo says that it is not going to take that approach. As a result, my answer to Cathy Jamieson's question has to be the rather general one that if these

proposals were to take their course, the Government would make available the type of support that we put in place in all cases of economic change. For example, we would support the workforce through partnership action for continuing employment, with Scottish Enterprise providing wider support.

I certainly do not need to tell Cathy Jamieson or, indeed, Willie Coffey that this decision will be a huge blow to Kilmarnock. As a consequence, the Government has to look outwith the general range of activities to find out how we might be able to support and stimulate the Ayrshire economy. That is why we are putting such an effort into the steps that we are taking with Diageo.

Gavin Brown (Lothians) (Con): I am conscious that the cabinet secretary has a meeting with Diageo tomorrow, but I am keen to find out whether there is anything in the finalised task force plan that is genuinely new and that Diageo has not previously examined and rejected. If there is something genuinely new, there might be a prospect of success but, if not, the situation will be difficult. Without giving away too many details, is the cabinet secretary confident that there is something genuinely new in the finalised plan?

John Swinney: The Government is confident that we have an alternative proposition to put to Diageo, which I hope in good faith will be considered and examined. As Mr Brown will know, in such circumstances, companies have an opportunity to take a different course from the one that they originally planned to take. The spirit in which the Government enters the discussion will be to try to secure a different approach. The alternative will be established on the basis of trying to achieve that objective.

Irene Oldfather (Cunninghame South) (Lab): In his statement, the cabinet secretary acknowledged the wider impact on fragile economies. Is he aware that some of the Diageo workforce who are in the public gallery have, regrettably, witnessed at first hand the fragility of the manufacturing industry in Ayrshire through the closure of the Ayrshire Metal Products, Volvo, Simclar and NACCO sites? Does the cabinet secretary agree that action is necessary to address the wider economic problems, which are exacerbated by closures and the present uncertainties? Will the task force that he has set up address some of those issues and, if not, what further steps can he take to assure the people whom I represent that Ayrshire has a sustainable economy?

John Swinney: Irene Oldfather makes a substantive point. In the past 40 years, there has been enormous change in the composition of Scotland's industrial economy. Some manufacturing processes will become impossible

to sustain in certain circumstances, because markets change or the cost factors become too great. My point about the proposal that we are discussing is that the company is significantly profitable. The action is not proposed as a result of a difficulty in making profits or in having a sustainable operation; it is about further maximising the gains. I do not criticise that aspiration; I simply say that other conditions must be borne in mind.

Irene Oldfather cited companies that no longer employ as many people or no longer employ any people at all. During the summer, I had the privilege of visiting a company in her constituency, Booth Welsh Automation, which is a fantastic example of a growing manufacturing company that is employing more people than it was before and which is making a contribution towards Scotland's manufacturing efforts. The Government believes that manufacturing has a future in Scotland. That is why, after discussing the suggestions that many members, including Mr Park, made about the Government's economic recovery programme, we have doubled the size of the Scottish manufacturing advisory service to help companies to adapt to changes in the manufacturing economy. That is part of our progress on the Government's economic strategy, which is focused on ensuring that we have increased sustainable economic growth and—crucially for the Ayrshire economy—that we tackle some of the regional differentials in economic performance. That will ensure that people in Ayrshire have the economic opportunities that they deserve.

Iain Smith (North East Fife) (LD): I ask the cabinet secretary for an assurance that the Economy, Energy and Tourism Committee, which I convene, will be kept fully informed of any proposals in relation to Diageo. Given that the cabinet secretary intends to achieve a solution that is in the best interests of the workforce, the company and Scotland as a whole, will he ensure that the impacts of any proposals are assessed fully, including the potential impact on possible new jobs in Fife, as well as the existing jobs in Leven and Cameron Bridge? Will he give an assurance that the Government gives equal importance to jobs in Fife and jobs in Kilmarnock?

John Swinney: I cannot quite remember whether I have signed the letter to Mr Smith telling him that the Economy, Energy and Tourism Committee will get all the information that we have available on the issue or whether it is waiting to be sent to him, but it is certainly in the post or close to being in the post.

Although I appreciate the concerns that members from Fife have expressed about the potential impact of the proposals, as I said in my statement, the fundamental difference is that the

proposals in Kilmarnock and Glasgow will remove jobs that are already in place in the economy and have a severe and difficult economic effect in those localities. I understand Fife's aspiration to attract new employment. Mr Smith will know of all the Government's commitments to a range of different projects, not least of which was the announcement by Mr Mather just a few weeks ago of further commitment to Fife Energy Park in Methil. He will know that the Government is doing everything that it can to expand employment in every part of the country. I am sure that he will understand our concern about the severe economic impact of the Diageo proposals that will be felt in parts of Glasgow and Kilmarnock and that the Government is acting to protect employment where communities will face severe economic and social challenges as a consequence.

Tricia Marwick (Central Fife) (SNP): I recognise the work that has been carried out by the task force in such a short time to put together proposals to save the threatened jobs in Kilmarnock and Glasgow. However, does the cabinet secretary recognise that there is genuine concern among the workforce and people in my constituency that the reported task force proposals could affect the long-term future of the Leven plant?

John Swinney: I have heard that point made, but I do not accept or agree with it. Diageo has made enormous commitments to Cameron Bridge and Leven and it has significant long-standing investments in the Fife economy. It strikes me that Diageo's roots in Fife are strong and well embedded, which can give certainty and confidence about the long-term future of employment for its employees in Fife.

It is clear that the proposals of the Government and the task force are focused on ensuring that we avoid economic and social damage in other communities in Scotland. As Tricia Marwick will know well—I recall her welcome to Mr Mather's announcement of new investment in the Fife Energy Park—the Government is making an enormous commitment to Fife in a variety of ways. However, we have a duty to try to avoid serious economic and social consequences elsewhere in Scotland at this time.

Marilyn Livingstone (Kirkcaldy) (Lab): We congratulate the cabinet secretary on his efforts for the workforce in Kilmarnock and Glasgow. In his statement, he rightly referred to fragile communities. As he is aware, Levenmouth is one such community. It is recognised across parties as being in need of both social and economic regeneration. In light of Diageo's importance to Levenmouth and Fife, there is some concern about the proposals. We would like the cabinet

secretary to give firm assurances that, in discussions of the proposals, he will ensure that there will be no negative impact on the future sustainability of investment in the Fife plant and that continued investment is vital to secure a future for the plant and, importantly, its workforce.

John Swinney: I recognise Marilyn Livingstone's point, which is similar to those made by Iain Smith and Tricia Marwick. As I said to Tricia Marwick a moment ago, the investments made by Diageo and the scale of its operations in Fife are such that the roots of the company and the strength of employment there are very robust. I ask Parliament to understand that we have a choice whether to act to try to avoid serious economic consequences in Kilmarnock and Glasgow. The Government is exploring with its partners and on a cross-party basis how best we can undertake that activity to protect employment in Kilmarnock.

As Marilyn Livingstone will know, there are different experiences in different parts of the country in relation to employment gain and loss. Before the summer recess, she raised with ministers some of the difficulties in her constituency. I spoke to the company involved at the end of last week and there is much brighter news about employment levels in the company.

We have to ensure that in all circumstances we use whatever interventions we can to boost employment in the country, which is what the Government will aim to do.

Sandra White (Glasgow) (SNP): The cabinet secretary will undoubtedly be aware of the decision by InBev to sell another of Scotland's iconic brands—Tennent's lager—to C&C Group. Does he agree that the assurances that I have received from that company that it is fully committed to the continuation and development of the Wellpark brewery in Glasgow, which are in stark contrast to the way in which Diageo has acted, are to be welcomed and that Diageo would do well to have the same faith in and commitment to the workers in Scotland that have been shown by the new owners of the Tennent's lager brewery?

John Swinney: I spoke to the management of C&C Group, which is now the owner of the Tennent's Caledonian brewery in Glasgow, last week and they gave me great encouragement about their commitment to develop the facility and showed an enthusiasm and willingness to ensure that this new part of their business activity would contribute significantly to the wider work of the group. I assured the management of C&C Group of the Government's willingness to engage with them in the fashion that I have set out in my statement, on the basis of supporting and

sustaining investment, and to undertake that dialogue in a private and confidential fashion.

David Whitton (Strathkelvin and Bearsden) (Lab): As the cabinet secretary will be aware, a number of those who are employed at Port Dundas live in my constituency. As the report that the Government commissioned makes clear, the closure of the distillery will lead to everyone at Port Dundas being made redundant with no option to transfer to Cameron Bridge. The third distillery in this is the distillery in Edinburgh, where Diageo has a joint venture with its rivals Edrington Group. In his discussions with the management tomorrow, will the cabinet secretary impress on them that they should reconsider the option of the joint venture and come out of that, which would give longer life to the workers at Port Dundas, who have served the group so well?

John Swinney: Mr Whitton makes a point that has been made clearly in the task force discussions about the investments that Diageo has made. I will be setting out to Diageo a range of different observations about the marketplace, as I set out in my answer to Mr Brown a moment ago, and about the assessment of the capacity that there is for grain distilling in Scotland. There are many ways in which the viability of Port Dundas can be assured, if there is a commitment from Diageo to continue with production at the plant and to take the necessary steps to support it into the future.

Linda Fabiani (Central Scotland) (SNP): We all know the importance of the Scotch whisky industry to Scotland and the important place of Diageo in that industry. That is why Unite's campaign to keep Diageo jobs in Scotland is so well supported throughout the parties. Does the cabinet secretary share my concern that Diageo's announcement potentially undervalues the heritage and provenance of whisky? We all must take very seriously the possible damage to whisky as a premium brand internationally.

John Swinney: The point that Linda Fabiani makes is central to this discussion. The importance of the roots and origins of Scotch whisky is not something that we can in any way jeopardise. Any assessment of the brand value of Johnnie Walker or of the significance of the brand connection of any individual brand of whisky with Scotland shows that that connection is part of its unique selling strength. I would certainly want to see that issue reflected in the consideration that we take forward with trade unions and other stakeholders in the whisky summit to which I referred in my statement, to ensure that we have a clear and agreed sense of the direction in which the industry is developing and how we can support its development in the best interests of the Scottish economy.

Claire Baker (Mid Scotland and Fife) (Lab):

The cabinet secretary said in his statement that Fife Council was kept fully informed. Has the Government met Fife Council officials to discuss the ways in which alternative proposals might impact negatively on sustainability and investment in the Leven plant? In taking a lead on this, the Government must ensure the involvement of all interested parties, including Fife MSPs. I ask the cabinet secretary to prioritise a meeting with Fife members.

John Swinney: I am always happy to meet members of Parliament. I do so constantly on a variety of issues. Indeed, I will meet one of my Liberal Democrat friends later this afternoon, which is always something to look forward to.

As I said in my statement, I have personally kept Fife Council advised of the steps that the Government has been taking. However, if Fife members would like to come and see me about these questions, I would be delighted to meet them, as I always am.

Schools (Consultation) (Scotland) Bill: Stage 1

The Presiding Officer (Alex Fergusson): The next item of business is a debate on motion S3M-4734, in the name of Fiona Hyslop, on stage 1 of the Schools (Consultation) (Scotland) Bill.

I am delighted to report that, for once, we have considerable flexibility around the time for debate, so I do not need to be ruthless in holding members to their time allocations.

14:46

The Cabinet Secretary for Education and Lifelong Learning (Fiona Hyslop): I express my gratitude to Karen Whitefield and the other members of the Education, Lifelong Learning and Culture Committee for their careful, thorough and constructive scrutiny of the Schools (Consultation) (Scotland) Bill and for preparing the stage 1 report. I also thank the many groups and individuals who provided evidence to the committee, as well as those who contributed to the earlier Scottish Government consultation. Throughout the consultation and drafting processes, we have worked hard to build a consensus with all those who are interested in school closures, and I am encouraged by the breadth of support for the bill.

I am particularly encouraged by the fact that councils, which will be responsible for applying the new procedures, have been broadly supportive of the bill, as have the Convention of Scottish Local Authorities and the Association of Directors of Education in Scotland. Many others have also supplied their support, including Her Majesty's Inspectorate of Education, the Scottish rural schools network, the Moray forum, the teaching unions, Scotland's Commissioner for Children and Young People, Children in Scotland, the Scottish Youth Parliament and Consumer Focus Scotland.

The Government came to power with a clear commitment to create a legislative presumption against the closure of rural schools, in recognition of the specific challenges that Scotland's rural communities can face and of the role of many rural schools in providing the focal point for a whole community. A similar position was put forward by the Conservatives and was the subject of a member's bill proposal by Murdo Fraser.

In addition, we are committed to improving the process for all school consultations. The current regulations date back to 1981 and have been amended several times, reflecting a very different era. Today, the public expect a more robust, thorough, fair and open consultation process.

George Foulkes (Lothians) (Lab): The cabinet secretary is dealing with her manifesto

commitments in relation to rural schools. Can she confirm that there was also a clear manifesto commitment to the reduction of class sizes to 18 in primaries 1 to 3?

Fiona Hyslop: Yes, I acknowledge that commitment. I am delighted that we now have record lows in class sizes and record lows in pupil teacher ratios. Indeed, on my visits throughout the country, along with Keith Brown and Adam Ingram, I have seen and heard local authorities' commitment to make progress on that concordat commitment, as it is now.

To achieve a legislative presumption, the bill aims to make a decision to close a rural school one of last resort—that is, a decision that can be made only once full consideration has been given to the full facts, including alternatives to closure, the impact of closure on the community and the effect of increased travel on pupils and staff as well as on the environment.

Malcolm Chisholm (Edinburgh North and Leith) (Lab): Is the cabinet secretary willing to urge local authorities that are undertaking school closure exercises, such as the City of Edinburgh Council, to follow the proposed new arrangements that are set out in the first 12 sections of the bill? What would happen if HMIE were to suggest that no educational benefit would accrue from a proposed closure, as I believe is the case in Edinburgh?

Fiona Hyslop: As the member will understand, the consultation to which he referred is a matter for the City of Edinburgh Council. He will note on page 19 of the bill and in schedule 3 the transitional arrangements for consultations that are in progress. Indeed, a number of local authorities have indicated that, as of now, they want to follow the best practice that is identified in the bill. Furthermore, bearing in mind the transitional arrangements and wanting to ensure that their decision making is carried out with due process, some local authorities are saying that they want to cover and embrace the new proposals in the bill.

The bill requires councils to explain in their proposal paper how they undertook their consideration of whether to propose a closure. It will therefore be set out clearly at the start of the consultation period.

In order to improve the consultation process that is required for all changes to schools, we decided to extend the bill to put in place a comprehensive consultation framework that will apply to all schools. By setting out the new requirements in legislation, we have underlined the importance to us as a Government of improving all consultations as well as providing clarity on how they should be carried out.

The main changes to the process are as follows: increasing the minimum statutory consultation period; extending the list of statutory consultees; introducing a transparent mechanism for dealing with allegations of inaccuracy in council proposal papers; setting out a formal role for HMIE in every consultation; and allowing additional time to enable a community to respond to a council's report before the final decision is taken. I recognise that there is good practice, but it is not universal. By way of the bill, we aim to build on existing good practice and create a robust, modern framework that will bring all consultations up to the standard of the best.

Margo MacDonald (Lothians) (Ind): In the event that a consultation does not meet the best practice requirements that the cabinet secretary has outlined, will parents have recourse to somebody somewhere?

Fiona Hyslop: Indeed, yes. I refer the member to the bill. One proposal is for ministerial call-in: if a consultation process is not carried out properly, parents can refer the decision to ministerial call-in.

As I have just outlined to Margo MacDonald, in order to support such improvement the bill removes the automatic referral of certain council decisions to ministers—I refer to referrals that can be made on the rather arbitrary grounds of occupancy or distance. The responses to the Government consultation showed clear consensus on the need for change, but views were polarised on what should replace referrals. Further consultation with all those with an interest helped us to identify an acceptable way forward: replacing ministerial referrals with a new power for ministers to call in certain decisions.

The bill restricts call-in to closure decisions and only when there appear to be serious flaws in the consultation or decision-making processes. The intention is to enable local decisions to be made by those who are locally accountable and locally elected while providing a balanced and consistent check on the most contentious decisions, which are—as we all know—closures.

The Education, Lifelong Learning and Culture Committee deliberated carefully on the evidence that was submitted to it. I thank its members for their helpful and thoughtful stage 1 report. I am pleased that the committee expressed broad support for the aims of the bill and that it recognised the need for decision-making processes to be as widely understood and—importantly—as transparent as possible. That is a key aim of the bill.

Let me turn to the report's conclusions and recommendations. The committee supports our intention to introduce statutory guidance on the contents of the educational benefits statement and

has recommended that the guidance is extended to cover the whole proposal paper. I recognise the value of that suggestion. In extending the guidance, we will address the committee recommendation to encourage councils to include other factors when relevant, such as the condition of a building. We will also consider how best to provide guidance to councils on how the cost implications of proposals should be illustrated in a proposal paper in a way that is both proportionate and easily understood.

The committee also suggests that we give further thought to the practical issue of maximising engagement with consultees, and it supports the suggestion that I made in my evidence that we engage with the children's commissioner on consultation with pupils. I am happy to give an undertaking that we will take that forward and reflect it in our guidance.

The committee asks the Government to note concerns in evidence about notification of the consultations, particularly the use of pupil post. I have noted those concerns and will consider how to address that point in guidance. Some wry smiles there—as a mother of three, I have some sympathy with that issue.

Finally, the committee asks the Government to consider extending the time that councils have to notify it of closure decisions. I am willing to do so.

I will respond in my closing remarks to the more contentious points raised in the report and in the course of the debate, but at this point I want to address the fundamental issue of rural schools. I note the committee's recommendation that the Scottish Government should give further consideration to extending to all schools the three additional rural factors set out in the bill. There are two important aspects to that: what we propose for rural school closure consultations—and why—and what we propose for all school consultations.

It is important to recognise the different experiences of our rural communities. The closure of a rural school can mean that children have to travel many miles to an alternative school—in particularly remote rural areas, that can often mean travelling to another village. In turn, that can impact adversely on the viability of whole communities, as families with children are drawn to villages with schools.

As I said in my evidence to the committee, at the launch of the bill in Dalwhinnie I was struck by the fact that nearly all of the pupils' parents worked on local estates. The gamekeepers there told me that, without the school, those estates would struggle to recruit. I know that such a situation is replicated throughout many parts of rural Scotland—there are many fragile rural areas in Scotland where the continued existence of the

village school is closely intertwined with the continued viability of the local economy.

The Government recognises the importance of preserving and promoting a rural way of life. If the bill's rural provisions were to be extended to all schools, that would be to disregard the fragility of many rural communities and the proportionately greater impact that rural school closures can have on job opportunities, the local economy and the community.

Margaret Smith (Edinburgh West) (LD): Does the minister accept that those of us who have some concerns about that in no way want to diminish the safeguards in the bill for rural schools? Extending those safeguards, for example to an urban school in an area of deprivation or a semi-rural school where a transport issue needs to be addressed, can be done without affecting the safeguards for rural schools.

Fiona Hyslop: It is important to recognise the strength of the improvements on consultation for all schools, including semi-rural schools with transport issues. The definition of rural schools follows the national classification as it currently stands. First, when transport is an issue, there is a case for HMIE to put that in its statement. Secondly, the local authority will need to address it in its proposal paper. There is even a third safeguard for all schools, which is that, if transport is an issue raised in the consultation, the council will have to respond in the consultation report. The fact that the safeguards that apply to rural schools are not extended to urban schools does not diminish the protection for urban schools.

We recognise that decisions on urban schools are just as keenly felt within communities, which is why the bill sets out a clear and robust framework for all school consultations—rural and urban. All statutory consultations on changes to schools will be subject to a rigorous, robust and transparent process set out in law.

The bill aims to ensure that all school consultations are open, transparent and fair; that all those with an interest have the opportunity to contribute to a meaningful consultation; and, most important, that we create a system that commands the trust of pupils, parents and staff.

The bill recognises the need to preserve and support the unique and special nature of rural Scotland by ensuring that no rural school closure can be proposed until full consideration of all possible alternatives, the resulting impact on the community, and the resulting impact of changes to travel has taken place.

I move,

That the Parliament agrees to the general principles of the Schools (Consultation) (Scotland) Bill.

14:59

Karen Whitefield (Airdrie and Shotts) (Lab): I welcome the opportunity to speak on behalf of the Education, Lifelong Learning and Culture Committee in the stage 1 debate on the Schools (Consultation) (Scotland) Bill.

Before commenting on the stage 1 report, I thank those who helped the committee to scrutinise the bill so effectively. In particular, I thank those who gave written and oral evidence to the committee. We considered an impressive range of evidence, including more than 60 written submissions, and we took oral evidence on the bill in the course of five meetings.

I thank the bill team, the Cabinet Secretary for Education and Lifelong Learning and my fellow committee members for their work on preparing our report. As always, the committee is grateful to the clerks for their hard work and commitment, and our thanks go to the Scottish Parliament information centre for its briefings and expertise. Finally, I thank the Subordinate Legislation Committee and the Finance Committee for their reports on the bill.

From the outset, let me say that the committee is supportive of the general principles of the bill. Every child has the right to a high-quality education, and there are few things more important than ensuring that every child in every community can go to a good local school. In our consideration of the bill, the needs of children and their families should be at the heart of our policy, and services for children and their families should be at the heart of our communities.

Closing schools is never an easy decision for a local council, and the committee believes that the motivation of the bill is to enshrine best practice and to make the process as transparent and accessible as possible for all those who are affected by changes. The bill will not mean that no school will ever be closed in the future, but it is anticipated that it will ensure that the decision-making process will have been open, transparent and inclusive, guaranteeing that the decision is in the best interests of the children, staff and community affected. In that respect, the committee welcomes the bill, in particular the plans to ensure that the consultation process is made fairer, more open and more inclusive.

I especially welcome the plans to ensure that pupils as well as parents have a role to play in the process. I echo the evidence that was submitted by Scotland's Commissioner for Children and Young People, which the minister highlighted in her speech. I note her commitment to ensure that young people will be part of the consultation process—after all, they will be affected by it.

As everyone here will be aware, article 12 of the United Nations Convention on the Rights of the Child gives children the right to be heard and to have their views taken into account. The committee therefore welcomes the cabinet secretary's assurance that she will consult Scotland's Commissioner for Children and Young People on the best way to involve children and pupils in the process in a meaningful way and one that does not cause them undue distress or concern.

The committee accepts the view that rural schools require special provisions. Schools should be at the centre of community life—that can be as true for urban schools as it is for rural schools—but some rural schools might be the only facility in the community or in the whole area for some considerable distance. Many rural schools make an invaluable contribution to their local area, and every attempt should be made to preserve access to a local school for rural communities.

In a situation where closure is being considered by a local council, the bill will, we hope, ensure that closure is possible only when the case is a strong one, when it is in the interests of educational provision in the local area and when all local stakeholders have been consulted and involved in the process.

Following its consideration of the bill and of the oral and written evidence, the committee has three main areas in which, we believe, further thought and consideration would be helpful before the commencement of stage 2. The first issue concerns the role of HMIE. Section 8 will require HMIE to consider the educational aspects of every education authority proposal to close a school or to make other relevant changes to the school estate. In evidence, representatives of many local authorities felt that the proposal lacked clarity. Some of them expressed concern about whether HMIE has the required resources and about a perceived potential conflict of interest regarding HMIE's role as both a consultee and an adviser. For example, Clackmannanshire Council stated:

"we remain concerned about the prominence which HMIE is given in the process described in the Bill."

That view was echoed by the Educational Institute of Scotland, which said:

"As the HMIE is an 'executive agency of the Scottish Ministers' this may lead to at least a perceived conflict of interest if the closure proposal were to be subject to a subsequent call in notice by the 'Scottish Ministers.'"

The committee welcomes the involvement of HMIE in the consultation process, but we think that the Government must examine those concerns fully before stage 2.

The second of the committee's concerns relates to the three factors that local authorities must

consider when making proposals that will affect rural schools—I know that the cabinet secretary is considering the matter fully. The bill will require education authorities to consider:

“(a) any viable alternative to the closure proposal,

(b) the likely effect on the local community in consequence of the proposal (if implemented),

(c) the likely effect caused by any different travelling arrangements that may be required in consequence of the proposal (if implemented).”

The committee accepts that rural schools require special consideration, but those three factors could apply to all schools. During one of the committee’s evidence-taking meetings, the Association of Scottish Community Councils told us:

“the three criteria should not be used specifically for rural schools.”—[*Official Report, Education, Lifelong Learning and Culture Committee*, 13 May 2009; c 2365.]

The Educational Institute of Scotland expressed concern that local authorities that have rural and non-rural schools

“may be required to treat the closure of two schools within its area in two different ways.”

There is no doubt that rural schools face specific challenges, but schools in urban areas often face specific challenges, too. Professor Kay told the committee:

“Many issues that pertain to rural areas impact on urban schools.”—[*Official Report, Education, Lifelong Learning and Culture Committee*, 6 May 2009; c 2319.]

Therefore, although the committee accepts that additional factors need to be considered when the closure of a rural school is proposed, we heard evidence that the three additional factors could apply to all schools. The committee asks that the Government keep the matter under active consideration.

I move on to consider the committee’s third area of concern. The majority of respondents who provided evidence agreed with the view that the current system of automatic referral to the Scottish ministers is no longer appropriate, as the cabinet secretary said. The committee shares that view, but the new system must be clear and transparent, and the committee is concerned that the Government’s proposed ministerial call-in process could create confusion. We are particularly concerned about the Government’s definition of a “material consideration”. Although the cabinet secretary discussed the matter with the committee during stage 1, further clarification before stage 2 would be helpful.

The vast majority of written and oral evidence that the committee received was supportive of the general principles of the bill. The committee asks that the Scottish Government continue to consider

fully the recommendations in our report. I am pleased that the cabinet secretary has proactively followed up on many recommendations, and I hope that that constructive working relationship will continue as we progress to stage 2. I am pleased to be able to recommend that the Parliament support the general principles of the bill.

15:08

Ken Macintosh (Eastwood) (Lab): We came back from the recess to the fall-out from the al-Megrahi debacle and the decision to postpone the introduction of the children’s hearings bill, and to yesterday’s unfortunate meeting of the Education, Lifelong Learning and Culture Committee, at which members were provoked into the unprecedented action of moving to annul a Scottish statutory instrument, so I am almost relieved to have the opportunity to participate in what I think will be a relatively consensual debate.

George Foulkes: Oh, no!

Ken Macintosh: I was extending the hand of friendship, Mr Foulkes.

A number of issues with the bill remain, but I hope that with a little movement from the cabinet secretary we will be able to resolve them at stage 2. Like the convener of the Education, Lifelong Learning and Culture Committee, I note that the cabinet secretary mentioned a number of concessions that will meet the committee’s concerns, for example about pupil post. I welcome the cabinet secretary’s approach.

Other issues need to be considered. We need further clarification of what will constitute a “material consideration” that triggers ministerial call-in of a school closure proposal, further explanation of HMIE’s role, and confirmation that we will not be introducing a two-tier system in which different criteria are applied to the closure of urban and rural schools. We need reassurance from the cabinet secretary that the Government will not cut funds to rural schools as part of the review of the local government distribution formula, and we need an indication of the Scottish Government’s plans for Gaelic-medium education—the issue is not dealt with in the bill but was raised in the consultation process. That is a long list, but I hope that I sounded suitably consensual.

If I do not get through all those points in my opening remarks, it is because members can look forward with anticipation to the prospect of my summing up too for Labour—I am sorry, Presiding Officer: I have made the long afternoon seem even longer.

Proposing the closure of any school is always a difficult decision that is likely to provoke a strong reaction from the people who are affected. The Parliament has wrestled with those difficulties over several years. Some of us remember Cathy Peattie's work as reporter to the Education, Culture and Sport Committee almost 10 years back, which resulted in COSLA producing a new code of practice on school closures. Peter Peacock, when Minister for Education and Young People, addressed the problem by producing stronger guidance on how to improve consultation. Most recently, Murdo Fraser proposed a member's bill that would have introduced a presumption against the closure of rural schools. The difficulties that colleagues have wrestled with over that period include resolving the tensions that can exist between local decision making and national accountability, and, for many of us, a desire not to introduce a false division between the needs of pupils in a rural setting and those in an urban one.

Colleagues from all parties are aware that, in rural communities, where small numbers are involved, pupil rolls can increase and decrease dramatically with the movement of only a few families in or out of an area or simply with the transfer of a few pupils from primary to secondary school. That, in turn, can cast an unwanted shadow over the sustainability of a local school. I hope that most of us are sympathetic to the fragility of such geographically isolated communities. It is right to give them the confidence that their schools will not suddenly be lost because of what could be temporary swings in fortune. However, it has emerged clearly from stage 1 that any criteria that are drawn up to protect rural schools can equally be applied to urban schools.

Those of us who represent constituencies in and around Scotland's cities will find it easy to identify with the three criteria that the bill outlines and to which education authorities would have to have special regard before they proceeded to propose a rural closure: whether there is any viable alternative, the likely effect on the community and the likely effect of different travel arrangements to an alternative school. The closure of a village school can be a devastating blow, but many witnesses who gave evidence to the committee highlighted the similar impact that closure can have on urban communities.

Fiona Hyslop: This is an important point. The committee convener stated that rural schools require special consideration. Does Ken Macintosh agree with that? If so, what should those special considerations be?

Ken Macintosh: The committee convener made that point but then went on to say that the committee wants the Government to keep the three criteria under active consideration. That was

the compromise position that the committee agreed.

The focus must be on the criteria that are needed to help to protect rural schools. The advantage of that is that those criteria will also help to protect urban schools, which means that we will not need to differentiate between them. At the moment, we are in danger of relying on special pleading, but we do not need to: the robust case that can be used to defend rural schools will apply equally to urban schools and be to the benefit of all. In its evidence, the EIS stated that it would be invidious to ask a council to apply two different sets of criteria to the potential closures of a rural and a non-rural school within its boundaries. As we go into stage 2, will the minister clarify whether it would be possible to have the same criteria rather than separate ones? That would protect all schools equally.

There was general agreement, among not only committee members but witnesses, that we must try to ensure that any consultation is comprehensive, accessible and fair. The bill stipulates that consultation must include an educational benefits statement; the committee further agreed that any closure proposal should also be accompanied by a cost benefit analysis.

That latter suggestion is slightly more controversial in that we heard conflicting interpretations of what it might entail. Saving money on an unsustainable school is clearly a factor—if not the crucial one—in many closure decisions, but witnesses to the committee gave widely differing views on what those savings might include.

On the one hand, we heard estimates that millions of pounds might be saved from greater utilisation of spare capacity in schools; on the other hand, we heard the assertion that the extra cost of spare capacity will be close to zero, so there is little money to be saved. To my mind, what is important is that there is openness about any figures on which a decision is based and that it is preferable that ministerial guidance is produced on preparing a cost benefit analysis.

On a related point, it also emerged in evidence from the Scottish rural schools network that the local government distribution formula currently provides additional funding for rural schools with fewer than 79 pupils. It also emerged that that source of supplementary support from rural schools may be under threat from an on-going Scottish Government review. I put a question on that to the minister at committee, but can she make the Government's position any clearer at this stage? As our witnesses argued, it would be ironic indeed for that funding to disappear as ministers supposedly moved to reduce the threat of closure.

One of the most important measures in the bill is the proposal to replace the existing automatic need to secure ministerial consent in certain cases with a broader ministerial power to call in closure decisions. There is certainly broad acceptance for reforming the current system—not only is there general unhappiness with an automatic referral that is based on distance from the school or on occupancy, but many regard it wrongly to be an appeal process. Having said that, there remains some anxiety over the new system, not only over the question whether ministers should be involved in decisions that are best taken locally but over the precise criteria to be applied in deciding whether or not a school closure proposal should be called in.

I believe that the minister recognised in her opening remarks that there is consensus about removing or repealing the old system, but perhaps there is not consensus about the new system. Certainly, several witnesses to the Education, Lifelong Learning and Culture Committee, most notably those representing local authorities, expressed their concern that the grounds—

Fiona Hyslop: Will the member give way?

Ken Macintosh: Yes.

Fiona Hyslop: To clarify, there was not consensus on the consultation, but quite a polarised response. However, the compromise and new creative solution of ministerial call-in that we have come up with has had consensus approval.

Ken Macintosh: I think that there is still some anxiety about whether ministers should have a call-in at all, but I recognise that that is an improvement on the current process.

As I understand it, the model that we are introducing is based on the planning system. The intention is that a proposal will be called in if a local authority fails to follow the correct process, but the bill also includes the catch-all provision whereby proposals will be called in when the local authority has not taken proper account of a “material consideration”. There is no definition of what may constitute a material consideration. Our evidence suggested that the term may be open to interpretation. I am sure that the minister can appreciate the worry that local authorities may have that, despite their following the correct procedures, controversial local decisions could still be second-guessed by ministers. We heard only one example during evidence at stage 1 of what the term “material consideration” may mean. Many of us on the committee would welcome an attempt to clarify or define further that term in the bill.

I will raise a couple of smaller points later in the debate, if I have the opportunity. However, I look forward to hearing members’ contributions on what

we can jointly do to improve the consultation process on any proposed school closure. I believe that members from all sides wish to ensure that all views are heard and given due weight before irrevocable decisions are taken on a school’s future.

15:18

Elizabeth Smith (Mid Scotland and Fife) (Con): I apologise on behalf of my colleague Murdo Fraser, who is absent from the debate because his wife Emma has just given birth to their second child, Lucy Elizabeth. I think that is a very good choice of name. As members will be aware, Murdo Fraser has a strong personal interest in the bill. It was good to hear the cabinet secretary paying tribute to him and giving him credit for taking some of the initiative on this front. I know that he is genuinely sorry to miss the first stage of the bill’s parliamentary process.

The school is, perhaps more than any other institution, often the defining characteristic of a community. Quite apart from delivering the crucial element that is education, it binds together families and people of different age groups, and is usually the focus for a wide variety of community activities. In rural areas, that focus is even more pronounced and is, indeed, often the difference between there being and there not being a community. We are therefore very pleased by the Scottish Government’s recognition in section 12 of the specific concern about closure of rural schools, not least because of the much wider implications for sustainability of their local areas and the fact that—as was put very strongly to the Education, Lifelong Learning and Culture Committee by the Scottish rural schools network—in the case of several rural school closures, the combination of increased travel costs, increased overheads at the receiving school and the possible loss of revenue from grant can result in additional costs, rather than savings.

It is also good to see that the Scottish Government recognises the different categories of rurality. That recognition is vital to ensuring that schools are treated on their individual merits rather than as universal structures, which can sometimes ignore local circumstances. Those definitions will be important when we debate the principles of the bill as they relate to all schools.

The second principle—tightening the regulations that govern the consultation process—is also important. It is a matter of concern that there has not always been a consistent and equitable approach across our 32 local authorities.

The Conservatives will support the new power that will be introduced to allow ministers to call in any closure decision after it has been made,

should they think that it does not comply with the new requirements of the bill, or if a local authority fails to take account of all the relevant information. Accurate information is essential in the process. We have seen too many situations in which inaccurate and misleading information has been presented as justification for a school closure. The legal requirement to challenge any inaccuracies is therefore crucial.

In general terms, we fully support the principles of the bill. However, in case the Scottish Government thinks that it is in for too easy a ride, I suggest that clarification is needed in some areas. First, the educational benefits statement, which is essential to any decision, needs to be balanced with a more holistic approach so that we can give confidence to communities that the economic and social aspects have been correctly identified and properly weighted in the equation. I think that we all agree on that, but the cabinet secretary knows that opinion was divided among those who provided evidence on who is competent to comment on each of those aspects. Unless an attempt is made to clarify fully which factors will be contained in the educational benefits statement, I foresee a little difficulty.

I still think that there is a little concern about the role of HMIE, which is a hugely important stakeholder. The bill team rightly identified that the educational benefits statement should necessarily include a wide range of factors, such as the after-school facilities that are on offer to children, the links with the local community, and the school's ethos. Indeed, HMIE's role is paramount—probably in the minds of most parents, too. I ask the Scottish Government to reflect again on whether HMIE's new role is possible, given the available existing resources. I understand from the cabinet secretary's full reply in committee on 3 June this year that the main difference between the role of HMIE as proposed in section 8 of the bill and the current situation is that it will be involved in every proposal from the beginning, even if the case is not called in by ministers. That could mean quite a lot of extra work for it, especially if the educational benefits statement continues to include more and more factors. Members would like an assurance that HMIE has the resources to cope with that change, both in respect of the number of available staff and relevant experience.

There is a question of whether the financial settlement's terms might be revised in the future—Ken Macintosh referred to that. Currently, local authorities receive a revenue grant for the percentage of pupils who are educated in rural schools with fewer than 70 pupils, which means that if those small schools close, the local authorities will lose that financial entitlement. Obviously, that will mean a loss of revenue. There

has been some discussion about possible future changes to those financial arrangements, but that might be just rumour. It would therefore be helpful if the Scottish Government clarified its position. As Ken Macintosh said, it would be unforgivable if, at the very time when huge progress has been made on protecting our schools, the Scottish Government unwittingly created a financial incentive to close them down.

I reiterate the Scottish Conservatives' strong support for the bill. As I said in my opening remarks, my colleague Murdo Fraser has campaigned long and hard with many other people for such legislation. We believe passionately that it is needed. It is good that the Scottish Government has taken up the cause on the same basis.

15:24

Margaret Smith (Edinburgh West) (LD): The Liberal Democrats welcome the opportunity to speak about the bill.

The issue is important. As members may be aware, the City of Edinburgh Council is consulting on some school closures in the city, including the closure of Drumbrae primary school in my constituency, so I am under no illusion about the importance of the issue. About two weeks ago, there was a knock on the door of my constituency office in Drumbrae. A young girl came in carrying a handwritten letter, which read:

"Dear Mrs Smith,

Please don't close my school. I promise to save up all of my pocket money every week for the rest of my life and give it to the Council if it means they can pay to keep my school open."

That, more than anything, shows us the importance of schools to the pupils who not only get an education from them, but who form their first memories and first friendships in them. Schools are of fundamental importance to their pupils. I know that many colleagues will have faced possible closures in their constituencies. It is always a controversial and emotive situation, given the importance of schools to the fabric of our communities.

We know that councils across Scotland face difficulties because of tight education budgets and the need to ensure best value for every penny that they spend in education. Parental choice and changing demographics will always mean that some schools face underoccupation, which leads to higher costs per child in those schools. However, the evidence on savings is far from clear. Ken Macintosh mentioned the differences in the evidence that we took on cost benefit analyses. That is certainly an issue to which more attention must be paid.

It would be unrealistic to say that no school in Scotland should ever face closure, but we can say that no school should ever face closure without a detailed explanation being provided by the authority of the benefits of closure to the education of local children. No school should ever face closure without consideration being given to the impacts not only on the children who would be directly affected, but on those in the receiving schools in surrounding areas, on the local community, on others who use the school and on the wider authority area. No school should ever face closure without the views of its pupils, their parents and the parents of its prospective pupils being heard.

The SNP's original promise to enshrine in law a presumption against the closure of rural schools would potentially have taken decisions on schools out of the hands of the local councillors who were elected to make them. Parents need reassurances that proposed school closures are not foregone conclusions, that robust consultations will be carried out, and that councils really will listen and consider the impacts and alternatives—many of which are proposed by local people—before they make a final decision.

The Liberal Democrats' main concern about the bill, which I have already articulated in committee and which others have mentioned earlier in the debate, is the inclusion of special provisions for consultations on the closure of rural schools. The bill requires local authorities to have special regard to three factors: viable alternatives, the effect on the community of a closure and the impact of having to make travel arrangements to alternative schools. We fully appreciate the fragility of certain rural communities, and we do not disagree that rural communities are more strongly affected by the closure of a school that might serve many functions and make a significant contribution to the life of an area. However, we believe that community impact and travel considerations, in particular, could apply equally to non-rural schools. Ensuring that that was the case would not challenge the needs of rural communities. I have experience of proposals to close two of what I would describe—even if the description is not technically accurate—as semi-rural schools, on the edge of my constituency, where there are rural roads and which is on the edge of a large city. Transport issues were crucial in determining whether those schools should be closed. A case can be made for the appropriateness of such issues being taken into account. I have a concern that councils that are told that rural schools should be given special consideration might believe—wrongly, given what the cabinet secretary has said—that transport alternatives and community impacts can be ignored when closure proposals in non-rural areas are considered.

Fiona Hyslop: That is an important part of the debate. Even under the current system, the transport issues that are associated with school closures are subject to scrutiny. As minister, I have had to consider cases in which one of the transport issues has been to do with underpasses in large towns. With any school closure, such issues will always be considered as part of HMIE's educational benefits statement. The difference with rural communities is that we are talking about safety not over a distance of only 1 or 2 miles, but over large distances. That is where the environmental factor comes in, given that a rural school closure would result in pupils having to travel long distances.

Margaret Smith: I understand what the cabinet secretary is saying, but I think that there is a potential lack of clarity in the way in which those three criteria are set out, which makes it look as if the policy focuses mainly on rural schools. That takes into account what the cabinet secretary has just said. Concerns about the matter have been raised by the Educational Institute of Scotland and the Association of Scottish Community Councils, and the Scottish rural schools network acknowledged that school closures in urban areas could have community impacts.

The bill aims to ensure that the existing best practice and consultation that we know takes place across the country are standardised in local authorities throughout Scotland. I welcome that.

I also welcome the cabinet secretary's comments about transition arrangements. Within days of the announcement that the City of Edinburgh Council was considering a school closure, I contacted the council's education convener to urge her to ensure that the council's consultation was undertaken in line with the new legislation. That seems to me to be a perfectly sensible approach, and I am pleased to say that I have received certain assurances in that regard. I will, of course, continue to pursue the issue. I am heartened to hear from the cabinet secretary that many councils are doing that in the run-up to the introduction of the legislation.

We support the bill because we believe that it will make for more robust consultations, with proposal papers to be sent to HMIE, public meetings, consultations that take place within term time, detailed reports of the responses to the consultations and opportunities for people to mount challenges in situations in which they have been given wrong information, which can sometimes be absolutely crucial in the making of these decisions. The inclusion of an educational benefits statement is particularly vital, as we regularly hear concerns that school closures are seen as cost-cutting exercises and are being implemented because of the value of the land that

the schools occupy rather than because education is the absolutely key priority. It is important that the educational benefits statement gives clear reasons, based on educational concerns, for why a closure is being proposed. It is essential that decisions are taken on the basis of robust evidence. The bill's provisions that involve the ability to query and challenge situations in which wrong information has been given are welcome.

The Liberal Democrats proposed a greater role for HMIE in this process, and we welcome that element. Currently, HMIE is invited to comment only on proposals requiring ministerial consent, but I understand that that is not done on a statutory basis. I believe that a greatly enhanced role for HMIE in the consultation processes will help to reassure people that the educational impacts of the proposals are the key consideration. We welcome the fact that HMIE's comments will also be included in the final report on the consultation, which will be published, sent to all respondents to the consultation and put to the councillors who are to make the decision.

In passing, I note that many years can go by between inspections of a school by HMIE. In cases in which it has been many years since there has been an HMIE report on a school that faces closure, the provisions in this part of the bill will give people greater assurances than has been the case in the past.

We welcome the power of ministerial call-in in the legislation, which will replace the automatic referral system that is currently in place. As others have said, we need more information about what is meant by "material considerations", but I think that the safeguards are in place that will make that a valuable part of the legislation.

We will support the general principles of the bill today.

15:33

Bob Doris (Glasgow) (SNP): I am pleased to speak in this afternoon's debate as we consider the general principles of the bill. However, as I am a Glasgow MSP, members would expect me to focus on the elements that will directly affect my constituents.

Glasgow has just gone through a sweeping and brutal series of school closures—eleven primary schools and nine nursery schools were axed. I know at first hand how, when a local authority gets it badly wrong in relation to school closures, the pain is felt by the whole community, particularly the children and parents who are affected. Such open wounds will take a long time to heal in my city, and I suspect that many parents and their families will never forgive Glasgow City Council.

I believe that when a local authority is planning a fundamental alteration to the school estate, such as was planned in Glasgow, it is not good enough for proposals to appear as a bolt from the blue. Once a council has put forward a strategy for closing and merging a raft of schools, I suspect that that council's views become entrenched and that the ruling council group becomes defensive with regard to any criticism of such proposals. That might be the case irrespective of the council and the party that is in control.

In Glasgow, many parents read about the closure proposals in the newspapers before they got a letter from the council. That is not acceptable. The anger about that, and the feeling that secret schemes were being cooked up in back rooms for months, while everyone else was none the wiser, meant that the proposals did not go down well. That is no way to treat parents or children.

I welcome the strong steps in the bill to improve the consultation process. However, I suggest that when a local authority is considering rationalisation of its school estate in such a significant way, guidelines should provide for a pre-consultation exercise to be undertaken. I am open to suggestions on the nature of such an exercise and how it would be conducted, but it should be undertaken before any details emerge and views become entrenched.

Ken Macintosh: Does Mr Doris believe, given the nature of his remarks, that rural and urban school closures should be treated identically, or does he think that different criteria should apply?

Bob Doris: Given that the SNP's manifesto commitment—which I suspect members are only too keen to see us fulfil—specifically mentioned rural schools, it is only right that we also examine that particular issue.

From the Glasgow experience, it is clear that communities feel that they are taken for a ride and that councils are merely going through the motions. Communities can respect decisions with which they disagree, but only if they feel that they have themselves been respected. I ask the minister to consider whether, as part of the bill, the Government would be open to making provisions for pre-consultation guidelines.

Another aspect of the bill concerns the involvement of HMIE, which I strongly endorse. I note that HMIE will not be expected to attend consultation meetings, but it is important that it attend at least some. I am open minded about whether that means that it should attend meetings at a fixed amount of schools within any school closure programme, or whether it should have more of a roving role to evaluate the effectiveness of such meetings. It is clear from the Glasgow

experience that such meetings were poorly run and organised, and did not allow parents a genuine opportunity to express their views or to feel that they had been listened to.

I will give an example. If a parent raises fears about possible territorialism issues that might arise if their child's school should close, they would expect to be listened to, as opposed to being told on the night that there are well-established criteria to eliminate such problems. That should also be the case for matters such as safe walking routes to school or child care facilities—parents were told not to worry about such matters, and their questions were answered, on the very same evening as the public consultation meeting. Parents were not looking for slick presentations at consultation meetings from council officials with pre-rehearsed answers to justify all aspects of closure; they simply wanted to feel that they were being listened to. In Glasgow, 96 per cent of 8,000 respondents to the consultation among parents and communities objected to closure plans because they felt that they had been completely ignored.

There is clearly a need for some form of quality control within that aspect of any consultation process. It has to be monitored somehow, which may be a role for HMIE. If there is no independent assessment of the quality of consultations, many parents will feel that local authorities are not listening to them or conducting the process openly and transparently. I urge that consideration be given to how we monitor the quality of such consultation meetings, and to whether HMIE could be the body to do that job, although I am open to suggestions on other bodies.

There is much to be welcomed in the bill; I specifically welcome the extension of the list of consultees and I am delighted that teaching staff may now be allowed to have their say during a consultation. In Glasgow, I have heard some stories about quiet words being had with staff to remind them that the council is their employer and that it would be best if they said nothing. The teaching union Educational Institute of Scotland was rather muted about the Glasgow proposals, and I know that individual teachers would have liked the protection and the right to speak their minds in public.

I welcome the educational benefits statement that will be part of the process for councils, although some guidance may be needed on it. It should be retitled as something along the lines of educational analysis statement, as to call it an educational benefits statement could be a self-fulfilling prophecy and lead to an automatic assumption that the altered provision will be of benefit, which is not necessarily the case.

Councils need to move to a culture in which they will alter or throw out their initial proposals because their consultation exercise has worked and they are responsible. A willingness to do so is a sign of strength in councils.

Fiona Hyslop: The member made an interesting argument about calling it an educational analysis statement as opposed to an educational benefits statement. That cuts to the heart of the issue: there must be a proactive and positive statement of educational benefit. If the statement was just an educational analysis, all that it would provide would be pros and cons. We want to make councils work harder to demonstrate what the benefits would be. My counterargument is that, if we rolled back to having simply an educational analysis statement, that would pull back the position of parents who were trying to protect their schools.

The Deputy Presiding Officer: Mr Doris, you should keep an eye on the time.

Bob Doris: Of course. I thank the cabinet secretary for her helpful clarification.

I conclude by saying that I am delighted with the core change to allow call-in by the Scottish Government, as opposed to referral. If the bill becomes law, when a council does not comply with the requirements that are imposed on it, and does not take account of material considerations that are relevant to the decision, ministerial call-in will be an option. That is the real strength of the bill. Previously, such matters were dealt with by referral. In the future every parent, teacher, pupil and politician who disagrees with a school closure will be able to go to the Scottish Government and ask it to call in and review the decision.

15:41

Claire Baker (Mid Scotland and Fife) (Lab): Having considered the Schools (Consultation) (Scotland) Bill, the Education, Lifelong Learning and Culture Committee recognises it as a valuable bill that will improve the way in which school closure proposals, which always present challenges, are managed. It was encouraging to hear the broadly supportive evidence from stakeholders, which is reflected in the committee's stage 1 report. I thank the Cabinet Secretary for Education and Lifelong Learning for showing willingness to respond to the concerns that arose.

Other members in this afternoon's debate have examples of school closures in their constituencies and regions, and have been engaged with the passions that such closures generate, but the committee has not raked over the coals of previous decisions. Instead, we have sought to ensure that we deliver a transparent and robust system that instils confidence in the process. If we

have a process in which there are clear expectations on all the parties involved, we can ensure that the difficult process of proposing and conducting the closure of a school is carried out fairly. The committee is pleased to recognise that many local authorities have good practice in this respect, but the bill will enshrine that good practice in legislation.

As the convener outlined, the committee identified three areas of concern: the role of HMIE, the three additional factors that will apply to rural schools, and the need for clarity about the ministerial call-in process, particularly in relation to the definition of "material consideration". Additionally, members will have received representations from Consumer Focus Scotland, which has reservations about the time limits for consultation on school changes. That issue was raised during our evidence taking and different views were expressed on the appropriateness of the time limits. Perhaps the cabinet secretary will indicate the Government's views on that in her closing statement.

The closure of a school can be a polarising experience and the evidence that the committee received strayed into debates about the merits of small rural schools, and disagreements about the costs associated with closure, but the evidence from all witnesses was strongly in favour of case-by-case consideration. That approach was supported by people on all sides of the debate. The framework that the bill proposes should provide support for that approach.

The suggested requirement for an educational benefits statement as part of the proposal paper at the start of the consultation process was widely supported, although there was a desire from witnesses for consistency among local authorities. That generated some debate about how prescriptive the bill should be. The committee welcomed an indication from the cabinet secretary that statutory guidance is being positively considered and it welcomed the listening approach that the Government has taken to the issue. The committee also proposed that consideration be given to extending any guidance to cover the entire proposal paper: I welcome the cabinet secretary's earlier comments on that.

There is also merit in encouraging local authorities to include as part of the proposal paper a cost benefit analysis that looks at factors such as the condition of the buildings and additional transport costs. Again, I welcome the cabinet secretary's earlier comments on that. When witnesses highlighted past examples of decision making in school closure cases, it became clear that trying to establish fair, transparent and hopefully agreed costs could be fraught, and that it

would be good practice for a council to commit to a cost benefit analysis.

We would welcome more clarity from the cabinet secretary on the basis for a call-in. For example, at stage 1, I asked witnesses about how inaccuracies would be corrected. Some argued that placing a duty on the local authority to investigate inaccuracies would make the system more robust and self-policing. However, if any disagreements arise and if parents and communities challenge information in the proposal paper, the local authority will remain the adjudicator with regard to information. Any remaining dispute over information will be recorded and the local authority will be required to make public its reasons for any decision that it makes on allegations of inaccuracy. In many cases, the inaccuracy will be a typographical error or a fact, such as the journey time to school, that can be easily established.

That said, certain information, such as projected demographic changes and roll projections, in which it is more difficult to distinguish between opinion and fact, might remain disputed. This is a challenging area for parents and communities, who need the support and skills to access evidence and to be confident in presenting their case.

Indeed, in evidence, the Scottish Rural Schools Network stated:

"In one case ... a financial justification was given for the closure of a school, but in the spreadsheet analysis the totals at the bottom were all wrong. It took us the best part of a year to get the council to admit that it had totalled up the columns incorrectly."—[*Official Report, Education, Lifelong Learning and Culture Committee*, 13 May 2009; c 2349.]

Of course, the timescales in the bill are nowhere near a year, and I hope that the measures will effectively address communities' ability to challenge information and local authorities' ability to deal with such disputes.

Fiona Hyslop: Claire Baker has highlighted a very important element of improving the system. Under the proposed process, any questioning of information will have to be addressed in the council's consultation report, which means that people will not have to wait a year to get final agreement. I know the particular case that she referred to; in fact, it informed the best practice that we are putting into legislation, and the council concerned realised that it should have paid more attention to the matter at an earlier stage. Perhaps that might have happened under the proposed extended dispute resolution processes.

Claire Baker: I thank the cabinet secretary for her intervention. I am just about to mention the other safeguards in the legislation.

When asked whether the corrections procedure in the bill was enough, the SRSN said:

“If there were not a referral or a call-in process to provide the option of subsequent challenge, it certainly would not be enough.”—[*Official Report, Education, Lifelong Learning and Culture Committee*, 13 May 2009; c 2351.]

There is therefore a recognition that, after the initial challenge, the option of a referral or call-in exists. However, it is for that very reason that we need to be clear about how the call-in process will operate. Moreover, we need more clarity about what constitutes a “material consideration” to assist in cases in which information remains disputed.

Good progress has been made on the bill at stage 1, and I welcome the commitment that was made by the committee and the Government to look positively at the issues that need to be addressed at stage 2.

15:48

Aileen Campbell (South of Scotland) (SNP): It has not been long since Scottish schools came back from their summer holidays, and now we, too, are back from our summer recess. No doubt many schoolchildren are writing up their reports and essays on what they did during their holidays. In Parliament, however, we have the opportunity to look at what we hope to achieve in the coming parliamentary year.

I am glad that among the various important topics that Parliament is discussing this week we have this chance to debate the Schools (Consultation) (Scotland) Bill at stage 1. We might disagree on some of the other business that is before us, but I hope that we can reach a consensus on the importance of consulting communities on decisions about the future of schools.

As far as the bill is concerned, a constructive spirit has certainly been evident in the Education, Lifelong Learning and Culture Committee, of which I am a member. I, too, thank the wide range of organisations and individuals who gave evidence to the committee as we began our deliberations. In particular, the Scottish rural schools network’s submissions were very helpful, and I congratulate the group on its efforts over many years to bring a grass-roots perspective to the debate on the future of our rural schools.

The bill sets out procedures that urban and rural local authorities should follow in considering the possible closure of schools in their areas. Bob Doris has already told us about the devastating impact of the poorly handled consultation and brutal closure programme that has affected so many of his constituents in Glasgow. However, as a representative of the largely rural South of

Scotland region, I want to highlight the impact that the bill will have on rural schools.

I should declare an interest, in that I am a product of a rural school system. My primary school, in Collace in Perthshire, was a very small school with a maximum roll of no more than 30 in the time that I was there. I am glad that the school is still there, playing an important role in the community. The community role of schools, both urban and rural, is often the most important role, but it is perhaps often the most overlooked aspect when a closure programme is implemented.

Rural schools are centres of education, and it is often very good education that produces well-rounded and high-achieving children. The schools prepare our young children for the future, while helping them to learn about and maintain respect for the environment and the communities of which they are part. The schools form part of the community, as meeting and function places and as social hubs for the areas that they serve. Therefore, when a rural community’s school is threatened with closure, the concern is not just about the loss of an educational facility and the hassle and disruption of moving children to an alternative establishment; there is a real concern about the loss of a community hub, and the coffee mornings, after-school clubs, social events and meeting places that rural schools provide. Not just the teachers and pupils and their parents or guardians but the whole local population and the local economy are affected.

The issue is not a new one for the Parliament—we have discussed it many times—but the bill gives us the opportunity to do something to help protect schools and the communities that they serve. The bill will provide protection for schools by demanding that local authorities show the educational benefits of proposed changes and by ensuring that authorities go through a much more rigorous process than currently happens in some areas. That process will include the local community scrutinising the basis of decisions, which I hope will mean that if, at the end of the process, a school, sadly, has to close, the trauma and difficulties will be lessened as a result of the process of consultation and scrutiny.

One key aspect of the consultation proposals is the introduction of an adequate amount of time for consultation with the whole community, even those who do not have a child at the school. The consultation will have to take place over at least six weeks of term time, so it will not be possible to sneak it through during a holiday period, when people might be away or their attention might be elsewhere. That will help to mitigate the effect of whispers and rumours, which in themselves can be disruptive and unsettling for the community.

I have direct experience of that in the South of Scotland region. Last winter, word started spreading among schools in the upper ward area of Clydesdale that South Lanarkshire Council was considering closing or merging a number of small primary schools. I raised the issue in Parliament and held several special surgeries to listen to the concerns of parents, so that I could pass them on to the local authority. Because the council raised the issue only informally with some parent councils, many local people felt that they were not getting the full story about what the local authority had in mind. The council has now announced that it plans to undertake a full formal statutory consultation on options for Coulter and Lamington primary schools. As Malcolm Chisholm and others have said, I hope that, in doing so, the council will adhere to the best practice that is outlined in the bill, even if it is not yet law.

As the Education, Lifelong Learning and Culture Committee convener did, I welcome the proposal in the bill to ensure that children who would be affected by a closure are involved in the consultation process. I raised that issue in the committee. Scotland's Commissioner for Children and Young People is keen to raise awareness about the importance of consulting children in an age-appropriate manner. As the commissioner has pointed out, the United Nations Convention on the Rights of the Child enshrines a child's right to be heard in all decisions that affect their life. The convention also includes a right to education and states that the child's best interests must be a primary consideration in decisions that affect them. I am glad that the cabinet secretary has given that evidence a sympathetic response in the bill.

We are at an early stage in the legislative process so, no doubt, further refinements will be made to the bill before it becomes law. However, given the debates that we have had and the evidence that we have heard in the committee, and given the broad welcome for the principles of the bill from across the chamber, I believe that we can reach a consensus decision at the end of the process. If we get the legislation right, in future, when children come back from their summer holidays, perhaps fewer of them will do so in a new or merged school, and more will be able to write about how their local school continues to benefit their education and the wider community that it serves.

15:54

George Foulkes (Lothians) (Lab): I, too, am pleased to contribute to what I consider to be an important debate. I mean no disrespect to the important matter that we considered this morning, but the present issue will have a much more direct effect on all our constituents.

I say to the cabinet secretary that although she said in her introduction that the bill has widespread support—that applies to its general principles—as the debate has gone on, we have heard more and more reservations about some aspects of the bill, some of which I share.

It is crucial that the presumption against closure—albeit it is implicit in the bill—applies not only to rural schools, as others have said, but to urban schools. Whereas rural schools have problems of remoteness, some urban schools have problems of deprivation that need to be taken into account. Not enough consideration has been given to the problems of children from poor backgrounds when they go to school and the importance to them of good teaching and small class sizes.

As several others have said, the criteria against which ministers would call in closure proposals and decide to overrule councils need to be clarified. I hope that there will be clarification not only on the mechanism of consultation but on its substance.

As Bob Doris used the example of Glasgow, I illustrate my concerns with the current proposals to close four primary schools in Edinburgh. I hope that the cabinet secretary will note that, sadly, they are all in less advantaged areas: Burdiehouse, Fort, Royston and Drumbrae. I am sorry that Margaret Smith has left the chamber, because I wanted to hear more from her on what she thinks about a Liberal-SNP council proposing to close Drumbrae primary school. I have grave reservations about it, as have local pupils and teachers.

Recently, I attended a briefing with Councillor Marilyn MacLaren, the education convener of the SNP-Liberal Democrat City of Edinburgh Council. We pointed out to her that the SNP—and I think that the Liberals also supported this—made a manifesto promise to reduce class sizes to 18 for primaries 1 to 3. The cabinet secretary agreed with that earlier. The most recent statistics for Edinburgh show that there are only 480 pupils in primary 1 classes of 18 or fewer pupils; 2,804 primary 1 pupils are in the 18 to 25 category; and 398 pupils are in classes of more than 25. Edinburgh is way behind some other authorities, such as Midlothian and East Ayrshire, to take two random examples, in achieving the target for reducing class sizes in primary schools.

What is necessary to enable us to reduce class sizes? There are two key factors. One is the requirement for more classrooms—that is inevitable. If we have the same number of pupils but reduce class sizes, we need more rooms in which to educate them. We also need more teachers. That is why the Edinburgh proposals are particularly worrying. If City of Edinburgh Council

goes ahead with the closure of those four schools, including Drumbrae—I am glad to see that Margaret Smith is now present—it will mean more pressure on the receiving schools round about. If we consider what has already been said by the parents of pupils at those schools, it will mean that classrooms that have been transformed into music, physical education and general purpose rooms will have to be used as classrooms. That will diminish the educational experience not just for those pupils who come in from the closed schools but for those who are already in the receiving schools.

There seems to have been no consideration of the impact of the curriculum for excellence. I hope that the cabinet secretary will address that in her reply and explain how it will be taken into account.

I find it strange that Edinburgh has changed its arguments according to how the legislation appears to be changing. Originally, it said:

“smaller class sizes are a priority and can be achieved despite school closures”.

I do not know how, but that is what the council said. Now it is saying:

“larger class sizes are more beneficial for children as they will receive ‘team teaching’ and be entitled to more money per capita”.

We have to look carefully at the double-dealing and double-talk that seem to be coming out of the Edinburgh consultation.

We have heard talk about best value and business cases. I must say that I am very sceptical about business cases in relation to schools. Kids are individual human beings who need to be nurtured, so to talk about a business case for a school closure seems very strange indeed.

Marilyne MacLaren said that she had the support of the EIS for some of her proposals, but that is not what the EIS told me. The EIS put to me the powerful argument that when a closure is announced, it becomes a self-fulfilling prophecy. Margaret Smith will know that that is happening in relation to Drumbrae primary—parents are saying that if the school is going to close, they will not put their kids there; they will get them into the schools round about straight away. The insidiousness of such proposed closures has to be taken into account.

Is it not appalling and, indeed, criminal that we are closing schools and making class sizes larger when we have so many unemployed teachers? We have 550 trained secondary and primary teachers who are unemployed. Then there are the teachers who have just done their probationary year and who are excited and looking forward to teaching—there are no jobs for them. When we spoke to Marilyne MacLaren, of the nearly 100

probationer teachers in Edinburgh, only 10 had been offered teaching jobs, even though they are desperate to teach and there are kids who are desperate to learn. That is the appalling situation in SNP-controlled Scotland at the moment. That is exactly what is happening in our schools.

What will the council in Edinburgh—and councils in other areas—do if the parents and teachers are against closure? Bob Doris made the very good point that the councillors whom he came up against seemed to be entrenched and defensive. That is what I found with Marilyne MacLaren. I think that the City of Edinburgh Council has made up its mind that all four primary schools are going to close. What will the council do if there is strong opposition and there are powerful arguments against the closures from parents and teachers? I hope that we can get a commitment that the council will abandon the proposals. What will the Government and the minister do if the council ignores those parents and teachers? I hope that that will be a basis for calling in the proposals.

My good friend and colleague the convener of the Education, Lifelong Learning and Culture Committee rightly said that closure should take place only if there is a positive educational argument for it. What is being pushed through in Edinburgh is not being done on the basis of improving education; it is to do with saving money. It is an inevitable consequence of the concordat and the council tax freeze. I can understand why there is widespread disquiet about the Edinburgh proposals. I hope that Margaret Smith and all the other MSPs who represent Edinburgh and the Lothians will strongly support me—

Margaret Smith: I hear what George Foulkes is saying. I am not here to speak on behalf of the City of Edinburgh Council. We are in a consultation period and I have asked a series of questions to which I have still not received answers. In the same way that George Foulkes is calling on the council to listen, each and every one of us has to look at the facts that are presented. If an educational case can be made for the closure of a school, we have to be big enough—that includes George Foulkes—to say, on occasion, that perhaps the case has been made for closure. I am not saying that a case has or has not been made, but it works both ways.

George Foulkes: Nobody has ever accused me of not being big enough one way or another, as Margaret Smith knows. If there was a strong educational argument for closure and if the teachers and parents accepted it, I would go along with it.

We had a meeting that lasted more than an hour. Malcolm Chisholm, Margo MacDonald and I listened very carefully to the proposals. If there was a strong educational argument for closure and

the teachers and parents accepted it, we would support it. Equally, however, I hope that if there is strong opposition to the proposals, they will be abandoned by Margaret Smith's and Fiona Hyslop's colleagues who are in control at the City of Edinburgh Council.

16:04

Christina McKelvie (Central Scotland) (SNP):

Stage 1 has been an interesting journey, and I look forward to an in-depth examination of the bill at stage 2. I echo Fiona Hyslop and my colleagues in thanking the clerks, SPICe and all the witnesses who provided oral and written evidence to bring the report to a conclusion.

The cabinet secretary has laid out some of the background. The bill was a manifesto commitment of the SNP in 2007, and it is another promise that we are keeping. Murdo Fraser also edged his way into the issue with his member's bill proposal earlier in this session of Parliament. I congratulate him on the new addition to his family. I say to Murdo that, as always, I welcome his support for SNP policy.

I welcome the bill in great measure. It is a welcome development that will give parents and communities some say in how the schools in their area are organised. Like Karen Whitefield, I particularly welcome the involvement of children in the consultation. Many of the rights that are enshrined in the UN Convention on the Rights of the Child—in articles 12, 28 and 3, as we have heard—are met fully in the bill. The incorporation of the convention into as much of Scots procedure as possible is very important to me, and I am proud of the fact that those rights are in the bill.

I am sure that Sandy Longmuir will not allow any of us to rest until we have amended the law so that there is some degree of presumption against the closure of rural schools. The special place that rural schools occupy in their communities must be recognised. Aileen Campbell did that very well in her speech. Schools in urban areas contribute to their local communities, too, but in rural settings the contribution is more important simply because fewer facilities are available in those communities.

Consultation right across communities that are affected by changes to schooling in their areas is appropriate and right, and I congratulate the cabinet secretary on ensuring that such consultation will take place. She is being brave in putting ministerial action at the front and centre, requiring the minister to be aware of changes to school provision and to be responsible for calling in any closure decision that falls outwith the provisions of the bill. That is brave, but it is the right thing to do. Too often, in the past, ministers have washed their hands of any responsibility for

school closures and have referred to the guidance for referral instead of taking any proactive role. I appreciate that much of the consultation process that is outlined in the bill formalises what is already best practice, but it is of benefit to have that practice formalised in legislation. That gives education authorities a measure against which to stand and it gives communities the option of calling a foul when they think that they see one.

Additionally, the educational benefits statements that are proposed in the bill will ensure that education authorities will have to publish their thinking on how the changes to the school estate will affect education. I am sure that education authorities already undertake such analysis in each case. Surely, no councillor would vote to rationalise the school estate without having that information to hand. Nevertheless, it is better all round if we have those details out in the open, so that everyone can see them and debate their merits—the teachers whose employment is affected, the children whose education is affected, the parents who are trying to do their best for their children and the communities whose future might be affected by the proposals.

The idea of producing cost benefit analyses, which some witnesses suggested, was interesting, and the committee urged the Government to press education authorities to include them in their proposal papers for school estate changes. However, having had time to consider the issue over the summer recess, I now question whether there would be any great advantage in producing such analyses, because they appear to be exercises in bureaucracy that would not inform the debate to any great extent. I believe that the educational benefits statement will contribute more to the process than will a cost-counting exercise.

I appreciate where the witnesses were coming from—particularly Professor Kay—but I suggest that a cost benefit analysis might be of more academic benefit than of help in forming opinions. I am sure that such a wealth of information would be of interest, but it would not be of practical value. I cannot see how the adding up of a balance sheet should be the deciding factor in considering the school estate. Access to education and education provision should be centred on the benefits that it brings to the child, not the investment that the education authority is required to make. Perhaps we should not seek to add a burden for so little benefit.

Likewise, I disagree gently with my committee colleagues on the additional measures for rural schools. Rural schools have special needs that non-rural schools do not have. On that subject, however, I am persuaded by some—although not all—of the evidence that was submitted by Western Isles Council, which pointed out that the

presumption against beginning a consultation before considering the three additional factors could mean that pupils would have to stay in a school that was unsuited to their educational needs.

I am sure that the cabinet secretary can address those issues, and I look forward to her reassurances. In general, I endorse the view of the Education, Lifelong Learning and Culture Committee that the bill should proceed to stage 2.

16:10

Anne McLaughlin (Glasgow) (SNP): On 11 October 2007, the Cabinet Secretary for Education and Lifelong Learning wrote to the education conveners of all 32 local authorities to reissue guidance on school closures and to advise them of the Government's intention to legislate. Obviously, earlier this year, the Labour-run Glasgow City Council thought it best to get in quick and administer its brutal cuts before it found itself in the position of having to listen to and consider the views of those who would be most affected by its decisions. Rumours now abound that there may be more school closures to come in Glasgow. I hope that the same mistakes are not repeated and that communities are consulted genuinely and listened to.

Politicians make policy, as we are doing today, and we do so based on our various experiences. In my speech, I will address various parts of the bill and share the recent experience of my constituents in Glasgow. In doing so, I hope to highlight exactly why the bill is so important.

In the guidance to which I referred, Fiona Hyslop stated that the issues that are raised through consultation must be

“taken seriously, explored and also answered.”

That is reflected in the bill that we are considering. The bill would have come in very handy in the recent consultation in Glasgow. Many of the parents' questions were never answered or, if they were, the reply was not serious or systematic. On a wide variety of parent and community concerns such as asbestos exposure, the safety of walking routes and the integration of children into rival schools, the council response was to give a one-size-fits-all, cut-and-paste answer.

The bill spells out the broad range of stakeholders who must be included in a consultation. I, too, welcome in particular the involvement of teachers and staff in our schools and nurseries. When the Glasgow campaign kicked off, I heard time and time again from head teachers and staff who were being pressurised by their bosses to remain silent. They were told that they were ambassadors for Glasgow City Council

and that they could neither participate in campaigns to save their schools nor respond to the consultation. Indeed, they could not even discuss the matter with local MSPs. Not only is giving school staff the right to be consulted morally correct, it will make for better-informed decisions.

The bill provides for community stakeholders such as local community councils to be included in consultations. It also makes special mention of the importance of rural school buildings as community facilities. I appreciate the importance of rural school buildings, but the same case can be made for school buildings in urban areas, particularly in deprived areas where the school is often the hub of the community.

George Foulkes: Will the member take an intervention?

Anne McLaughlin: This is my first intervention, Mr Foulkes. You will have to be gentle with me.

George Foulkes: I am always gentle, particularly with Anne McLaughlin. We sit next to each other on the Audit Committee.

The member makes an eloquent case. Will she come through to Edinburgh to give a little lecture on just the point that she has made to the SNP members who are in joint control of the city? The paradox of the situation that she describes is that, whereas in Glasgow the school population is falling, in Edinburgh it is rising.

Anne McLaughlin: I extend an invitation to George Foulkes to come to Glasgow and speak to Steven Purcell and his colleagues. As George Foulkes is aware, I can speak in detail only of the situation in Glasgow. It is the situation that I know about.

I will give an example that shows the importance of school buildings to urban communities and why section 12 should be extended to include urban schools. In Govanhill, which is one of the most diverse, populated and deprived areas in Scotland, there is a beautiful Victorian building that until a couple of months ago housed Victoria primary school, but it is now threatened with demolition.

Govanhill is home to many vibrant community projects, including the Govanhill Youth Project, whose workers interact with young people on the street corners and in the parks where they congregate. Recently, when I walked the streets with project workers, they told me that, if the project is to bring together the diverse groups of young people in the area, it needs a facility of its own. Could not the Victoria primary school building be spared and its unused space loaned or leased to this worthy project? If the community has to lose a school, could it not at least retain the building?

The bill sets out clear guidelines for access to consultation proposal papers. For example, it states that education authorities must provide the information to anyone who

“may reasonably require that information in another form”.

I suggest that the bill could be strengthened to ensure that councils must actively look for those who reasonably require the papers in another format. If someone does not know that there is a consultation going on, they will not request papers in any format. In several areas of Glasgow, parents who cannot speak or read English were effectively denied access to knowledge of the proposed closures because although the initial letter to parents offered translators at public meetings, as I have said previously in Parliament on a few occasions, those letters were only in English.

More than 100 languages are spoken in Glasgow schools—that should be taken into account when people are being informed of changes that will dramatically affect their lives. I appreciate that letters cannot be sent out to all parents in more than 100 languages, but in Glasgow we have a pretty good idea of where there are groups of people for whom English is their second language. Would it really have been that difficult to include bilingual letters in communities such as Govanhill and Pollokshields, where there are concentrations of Slovak, Urdu and Punjabi speakers? It is not that difficult—I have done it myself.

The bill calls for inaccuracies in consultation documents to be promptly corrected and for corrections to be broadly communicated. In Glasgow, occupancy rates, enrolment figures, catchment areas, travel routes and other basic facts and figures were repeatedly bungled in consultation documents. However, the burden was put on parents, many of whom had no campaigning experience, to fight with the council to get the errors corrected. Even when the errors were acknowledged and apologised for, corrected documents were not sent out to parents. The overall result was distrust in the consultation process, the schools and the council—distrust that could take years to repair. For many, that distrust will be aimed not only at Glasgow City Council but at the political process as a whole and politicians in general. No member wants that, which is why we must enthusiastically support the bill.

One of the parents to whom I referred earlier is Lynn Scott, who campaigned tirelessly to save Barmulloch primary. Lynn told me that she felt that the parents' concerns were ignored. They were certainly not considered, and they were barely acknowledged. However, she and her fellow campaigners have now been not just acknowledged but given the recognition that they

deserve. Lynn has just learned that she is a finalist for the prestigious Sheila McKechnie Foundation consumer action award for 2009, which receives entries from the length and breadth of the United Kingdom. The award will be judged by the likes of Rebecca Smithers, consumer affairs correspondent for *The Guardian*, and is sponsored by the well-respected consumer rights organisation, Which?

I am sure that many members will join me in wishing Lynn Scott well at the awards ceremony next month. However, the one big thing that we can all do to help Lynn and parents like her, and their children and communities, is to move the bill forward and strengthen it in ways that will empower campaigners to stand up for their right to an effective consultation.

16:18

Elaine Smith (Coatbridge and Chryston)
(Lab): I had not intended to participate in the debate, but I would like to make a point that I hope the minister will be able to address at the end. My point is a bit long to make as an intervention.

As expressed today by members, the bill's aims are laudable and I am sure that most members will support it. I am interested in the detail on consultation, and in particular on transport. An example from my constituency will set that in context.

In Coatbridge, two high schools were closed. There were good reasons for that, including problems with the fabric of the schools, the fact that new schools were to be built, and falling school rolls. However, among the concerns of parents was that a denominational school was being closed and replaced by the non-denominational Coatbridge high school. Children from that area whose parents wanted them to go to a denominational school had to travel about 2 miles to do so—previously that had not been the case. Conversely, a non-denominational school was closed and replaced by a denominational one.

Unfortunately, the local authority's transport policy—although more generous than the national policy—stayed the same, so the children were unable to get transport to, for example, the new denominational school. The route to the school, which involved crossing a busy road, was quite unsafe. That caused some concern and took away part of the glow of the new buildings. More than that, it made some parents feel that they now had to send their children to a non-denominational school when they would have preferred them to have denominational education—the Catholic education that was on offer before. The same was true the other way round: some parents were sending their children to the nearest, Catholic

school rather than having them travel across the town.

I wrote to the local council about the matter, asking whether, instead of lines simply being drawn on maps, needs could not be taken more into account in urban settings. I refer here to some of the issues that my colleague George Foulkes raised. Could such issues be considered at stage 2—if they are not already included under the bill—or are they outwith the terms of the bill? If parents agree to a school closure for a good reason but have deep concerns about matters such as travel, perhaps that could come under a consultation, or even a call-in.

Fiona Hyslop: I would be happy to respond to any correspondence from the member regarding the case that she is talking about, although it is clearly an issue for the local council. I am not sure whether she is aware that I used the example of transport earlier in the debate. According to the proposed measures in the bill, if there are concerns about transportation for urban schools, they can be addressed in three separate steps. One involves HMIE and the question of educational benefit. Clearly, that aspect must be demonstrated in the inspectorate's report. There is also the role of the council in the proposal paper to consider. Furthermore, the council must directly respond, in the consultation report that it will have to produce under the bill, to the concerns of parents about transportation. I can give the member some reassurance that the proposals in the bill would address such issues directly for urban schools.

Elaine Smith: I thank the cabinet secretary for intervening with that point, which gives me some reassurance. I will put some of the details to her in writing for further consideration.

Thank you for letting me participate in the debate, Presiding Officer. I am sure that the bill will become a good piece of legislation, and I look forward to seeing it after stage 2.

16:22

Hugh O'Donnell (Central Scotland) (LD): This has been a useful and well-informed debate. I have learned quite a lot from the speeches that have been made so far, particularly those by members of the Education, Lifelong Learning and Culture Committee. Of all the possible areas of discussion around education in the public domain, the issue of school closures probably exercises parents, communities and pupils the most. We need look no further than the recent controversies that have been referred to by previous speakers to realise how emotive a subject it almost always is.

Schools play a big part in our communities. It has been said before, but it is worth reiterating.

Schools are part of our communities, both rural and urban. Often, they are the hub for much wider social activity and interaction than simply—I question whether “simply” is the right word—teaching our young people in the course of a normal school day. Schools often host Cinderella services such as community adult education and other community services such as the scouts, the cubs, the brownies, the Boys Brigade, support groups and so on. It is only right that the closing or potential closing of such vital local amenities should be a matter for local public consultation and debate.

I am glad to see that we have had contributions from Scotland's Commissioner for Children and Young People in relation to consultation with pupils. Here in the chamber and in the wider public debate, we are great at talking about children and young people, but we are not necessarily quite so good at talking to them. The commissioner's input was very welcome.

Local authorities, rural or urban, should take the decisions, rather than having us take them centrally. They should decide what is practical, appropriate and of most benefit to pupils and communities. Furthermore, such decisions should be taken after real, meaningful consultation with local communities. Part of the problem is the scepticism—I hesitate to use the word “cynicism”—about our process of public consultation.

From my experience of participating in and being an observer of public consultations, on a raft of issues from hospital closures to school closures, I can say that the hallmark of a consultation is often that the institution pays lip service to the process. Often, full-time officials, who work for public bodies and have access to huge amounts of time and resource, argue the case against part-time campaigners from community groups who are badly informed, however effective they might be. Anything in the bill that can create a more level playing field in the process will be welcome.

Margaret Smith: Will the member give way?

Hugh O'Donnell: I certainly will, but I am worried.

Margaret Smith: Does the member agree that access to information is crucial for people who are fighting a school closure proposal? As he said, on one hand the council has access to information, whereas on the other hand people in the community have only the information that is in the proposal document.

Hugh O'Donnell: That is a relief. One is always cautious about allowing a member of one's own party to intervene.

In all seriousness, Margaret Smith made a valid point. All too often, the information that institutions provide is constructed in a way that reinforces the institutions' arguments. That is not unnatural, but it places the people who oppose proposals at a distinct disadvantage.

On a related point, parents very often quite rightly approach the school's headmaster for information, which places the headmaster in an invidious position. The person is an employee of the local authority and must consider where their loyalties lie. They might have opinions that they cannot express and indeed are prevented from expressing timeously to the people who are campaigning to keep the school open. We need to find a mechanism—I do not know whether that could be the guidance, which will be tightened up—to ensure that people do not feel that they are mere observers in a consultation process that pays lip service to them.

The bill applies to all schools but makes special provision on rural school closure proposals. My impression is that bits were added as an afterthought, to ensure that the bill was not simply about rural schools. In the consultation document I see no text or graphs that refer to urban schools, although phrases such as “educational benefit”, “rural communities” and “fairness” appear at the bottom of each page. If the criteria are correctly structured and applied across the board, a decision should be fair, regardless of whether a school is in an urban or a rural area.

Of course, the bill has its origins in the SNP's proposal for a presumption against the closure of rural schools. To some extent, that promise, like many others, has been abandoned, and much of the bill is about trying to draw back from a policy that was undeliverable. The approach in the bill might be a little more palatable, but it does not get the SNP off the hook; the SNP has failed to deliver on its promise on rural schools. There was a commitment on the issue in my party's manifesto, and we are pleased that the Government has listened to our calls and moved away from enshrining in legislation a presumption against closure, in a prime example of a Government climbing down from an unrealistic, populist election pledge.

As the bill progresses, we need the Government to give it teeth to show concerned parents and communities that the process can be trusted, that their opinions are valued and that closure in any circumstance is not a foregone conclusion.

16:30

Nanette Milne (North East Scotland) (Con): I am pleased to have been given the opportunity to take part in the debate in place of my colleague

Murdo Fraser, who—I am sure—will just now be happily getting to know his new little daughter and bonding with her. As he lives in a rural area, I hope that the Parliament will acknowledge his personal efforts to ensure the viability of rural schools by putting his principles appropriately into practice.

The bill is important and timely. I welcome the SNP Government's acknowledgement that our manifesto commitment to rural schools, which was initiated by Murdo Fraser, merited inclusion in its Schools (Consultation) (Scotland) Bill.

Proposals for school closure always evoke strong feelings within communities, be they urban or rural. In recent years, we have seen many campaigns in cities such as Aberdeen and Glasgow, as well as rural areas such as Aberdeenshire and Moray, where changes have been proposed to the schools estate. Of course, increasingly cash-strapped councils have to rationalise their estate and it is clear that, if the families of a once-young community have dispersed to the periphery of a city, not all city centre schools might be educationally or financially viable. There may also be circumstances in which a rural school must be closed if the interests of pupils or a community merit it. However, before that happens, there must be genuine, open and honest consultation with the people concerned so that decisions are reached reasonably, rationally and—one hopes—with community co-operation. That is why the proposed legislation is important.

I can understand the argument, which the EIS and others have advanced, that the same criteria should apply to all urban and rural schools. The ramifications of that argument are worthy of further consideration as the committee recommends but, as it stands, I very much agree with the bill's proposals that special consideration should be given to changes that would affect rural schools because such establishments are often the hub of their communities. They are often in areas that no longer have churches, post offices or local shops and, without them, no community activities could take place. In such areas, the closure of the school is tantamount to killing off the community. It is right to regard the closure of a rural school as a measure of last resort, as the cabinet secretary stated in her opening speech.

As an aside, I point out gently to George Foulkes and others who seem to forget that deprivation is not confined to urban areas. There are significant pockets of rural Scotland in which communities are just as needy.

I first became involved with a campaign to save a group of rural schools in central Aberdeenshire when I was a parliamentary candidate before 2003. The director of education at the time

genuinely believed that pupils would receive a better education in a large modern school than they were getting in three smaller, old-fashioned, community-based buildings. His proposals incensed local parents and pupils, and a tremendous battle ensued to save the schools on the basis that they were excellent, popular establishments; that they were the hubs of their communities; and that travelling on narrow, rural roads to a new school building would not be in the best interests of pupil safety or wellbeing, particularly in the winter. The battle was won and the schools stayed open, although it was recognised that one of the buildings was really not fit for purpose.

Only two years later, to the dismay of the communities, another proposal was made to close not three but four of the schools in the area and replace them with a large new building. The reasons for proposed closure were advanced and discussed at a very lively and extremely well-attended public meeting. One of the schools was deemed unfit because it had no disabled access. Imagine the expression on the council officials' faces when they were informed that the school currently had a pupil in a wheelchair and that, only recently, appropriate facilities and access arrangements had been put in place to accommodate that pupil. The meeting collapsed. The closure proposal was later withdrawn and a promise made to build a new school to replace the one that needed upgrading. I am not at all sure that that satisfactory result would have been achieved without extremely vigilant and highly committed parents who were willing to leave no stone unturned in their efforts to save their schools and who researched the consultation proposals thoroughly before the public meeting.

I have since visited one of the schools as part of the Parliament's education outreach programme and met a happy, confident, very well-informed group of young people. They were welcoming and clearly supportive of one another. They have a dining room, where they receive excellent, healthy meals, and a garden that was made and is maintained by the pupils. They interact with all ages in the community at their regular coffee mornings and social events. When the time comes to move on to secondary school, they find the transition easy and straightforward, by and large. Such an education fully justifies the retention of small rural schools, many of which have the same ethos as the one that I have described.

I am delighted that those schools in Aberdeenshire were saved from closure, at least for the foreseeable future. However, the closure proposals contained significantly inaccurate and outdated information. I have no doubt that members will be aware of similar examples in other parts of the country. I note the concerns

about the involvement of HMIE in the consultation process, particularly about the resources needed to comply with the bill's proposals, but I hope that what is proposed in the bill will help to prevent the sort of problem that I have described from happening in the future; it could save many parents and pupils who are faced with the prospect of losing not just adequate but excellent small local schools from a great deal of anguish.

From my reading of the stage 1 report and from listening to the debate, it is clear to me that there is cross-party agreement on the general principles. However, as highlighted by Liz Smith in her speech and by several other members, there are concerns about a number of areas, which need to be dealt with in the next stages of the parliamentary process. By and large, though, the bill should result in a better-understood, thorough, robust and meaningful consultation process that should benefit communities across Scotland when changes are proposed for the school estate. As Liz Smith indicated, we are happy to support the bill at stage 1.

16:36

Ken Macintosh: Before I sum up, I want to mention briefly two issues that emerged at the committee stage but which have not received much attention during the debate. The committee heard concerns at stage 1 about some of the timescales that are outlined in the bill. I note that Consumer Focus Scotland has today repeated its call for the six-week consultation period that is laid down in the bill to be extended to the more generally accepted period of 12 weeks. Personally, I have a lot of sympathy with that position. However, no one wants the threat of closure to hang over any school. On that basis, members of the committee from all sides endorsed what is a fairly tight timetable for consultation and decision making.

On a separate point, the proposal in the bill that councils should have only one day to notify ministers of a closure seems a little impractical. The lack of a time limit to be imposed on any ministerial decision following a call-in looks anomalous by comparison. In evidence, Government officials suggested that any decision facing the minister would be, by definition, complex. However, it seems odd to have one set of rules for pupils, parents and councillors, and another for the Scottish Government. I would welcome any comments that the minister may care to make on the Government's approach to that matter at stage 2. I believe that she may have referred to that in her opening speech, but I did not quite catch what she said.

Although Gaelic did not feature in the policy intent behind the bill, it was remarkable that a

large number of respondents to the initial consultation commented that the bill might provide an appropriate vehicle for designating schools as Gaelic-medium schools. As we all know, there is a strong desire in the Gaelic community to move to the next stage in Gaelic-medium education so that pupils are not just in Gaelic units attached to schools but are totally immersed in an all-Gaelic environment. A majority of parents expressed support for such a measure through the consultation. I am disappointed that we did not take advantage of the opportunity to amend the bill in that regard. I ask the minister a question that I put to her during stage 1 and which I hope she has had the opportunity to discuss with the minister who is responsible for Gaelic. What has happened to the Government's commitment to guarantee in law the right of parents to access Gaelic-medium education for their children where reasonable demand exists? If such a provision is not in the bill, how do ministers expect to deliver on that election promise?

I return to this afternoon's speeches. A number of members, including Karen Whitefield—the convener of the Education, Lifelong Learning and Culture Committee—Elizabeth Smith and others, raised the concern over HMIE's role. Under the new consultation procedures, HMIE will be expected to play a key role in providing independent and impartial advice early on in a consultation. However, later in the process, if a decision is called in, HMIE will act as an adviser to the minister. I suspect that local authorities' initial fears that the bill will somehow allow HMIE to replace or overrule the decisions of locally accountable members have been somewhat allayed. Like other members, I would welcome further clarification from the cabinet secretary on that potential conflict of interest or the conflicting roles of HMIE. Is it an impartial consultee or a ministerial adviser? How can we ensure that its independence remains uncompromised?

Many members, including Christina McKelvie and my colleague George Foulkes have mentioned the rural-urban divide. George Foulkes helpfully reminded us that although rural schools have problems as a result of remoteness, urban schools can have acute problems of deprivation.

The cabinet secretary's opening speech left me with some concerns. Words about the idea of a presumption against closure have not been included in the bill; indeed, it is notable that the word "rural" does not appear in the bill's title. The cabinet secretary has gone some way towards addressing that issue, but I worry that she wants to have it both ways. She recognises the needs and demands of urban communities, but she still wishes to make a special case for rural schools. The dilemma that we face is that either we identify and agree on the three special criteria in the bill

because their application will particularly help those who live in rural communities, or we identify criteria that will allow rural schools to be treated differently from urban schools. If we do the latter, it is clear that it is not hugely important what the criteria are. If, as I hope, we do the former, there is nothing to be afraid of in ensuring that all closure decisions or proposals in all areas have regard to the factors of the existence of any viable alternative to the proposal, the impact on the community and the likely effect of different travel arrangements. Surely it is the fact that those criteria have particular relevance in a rural setting that offers reassurance, rather than any attempt to single out one set of schools for special treatment. I urge the cabinet secretary to consider that matter once more.

I, too, congratulate Murdo and Emma Fraser on the birth of their daughter. Mr Fraser sat in on every meeting of the Education, Lifelong Learning and Culture Committee on the bill, and his contribution to the measures that we are discussing is widely appreciated.

I thank and commend the work of Sandy Longmuir of the Scottish rural schools network—I think that he is still in the gallery. His campaigning over many years has done much to inform and enlighten members about the particular concerns that small rural schools face. In particular, I thank him for managing to steer a way through the often partisan nature of our discussions and helping us to reach near-consensus on the way forward.

That parents, pupils and local communities should have close emotional ties to schools is no bad thing, and the strength of local feeling is not to be dismissed. I like the example that Margaret Smith gave involving a young constituent. That gave a taste of the emotions that run high when a school is threatened with closure.

It is interesting that some of the most passionate speeches were made by members who have expressed their concerns about closure decisions in their constituencies. None of those members represents a rural constituency—they represent Scotland's two largest cities. The strong evidence that was presented during the evidence-taking stage of the bill to demonstrate not only that all schools, including rural schools, are valued but that small and rural schools provide a very good education was interesting.

I do not want to overstate the case, as I know that some small schools can be claustrophobic, but I do not buy the argument that pupils are somehow missing out because there are not enough pupils in their particular year to sustain a football or shinty team. The Scottish rural schools network has pointed out that the

"graduates of primary schools with remote rural status

consistently perform above all other area classifications at S4 examinations, university entrance and employment. Remote rural primary schools average just 50 pupils."

Mr Foulkes will be interested to hear that the network also said:

"The advantage shown is more marked in pupils who come from less financially privileged backgrounds."

Even HMIE told the committee:

"We believe that the proportion of small schools that are high-performing is slightly better than the national average".—[*Official Report, Education, Lifelong Learning and Culture Committee*, 27 May 2009; c 2433.]

Perhaps that is not the most dramatic of endorsements, but it is confirmation that small and rural schools are not the poor relations of all-singing, all-dancing large urban primaries and secondaries. Rather, they offer a positive choice and provide an excellent learning environment for our children.

It is clear that there are still areas in which the committee and the cabinet secretary need to engage with all those who are directly affected. Closing any school will never be anything other than difficult. However, I am confident that we can build on the work that has been done over several years to address the clear public concern that exists and improve the process that we follow.

I am happy to support the motion.

16:44

Fiona Hyslop: I am pleased to have had the opportunity to debate the principles of the Schools (Consultation) (Scotland) Bill. I thank all those members who have spoken in what has been a thoughtful and largely constructive debate, which has built on the general consensus that already existed around the bill.

The debate has been informed and shaped not just by what we have heard today, but by the work that has been done by many people over the past 10 years. I am glad that Cathy Peattie is in the chamber. Her report of almost 10 years ago for the Education, Culture and Sport Committee not only helped to clarify the agenda at the time but has informed us as we have progressed. Professor Neil Kay was involved in the case that she investigated.

Murdo Fraser has played an important role. We must ensure that he is sent a copy of the *Official Report*. Lucy Elizabeth will probably be one of the best toasted babies in Scotland today. Reference has also been made to the work of Sandy Longmuir and his colleagues in the rural schools network. I hope that the experience of developing the bill shows that, despite coming from very different and sometimes polarised positions, people can work together to come up with a constructive solution and make progress.

I have certainly been informed by my experience of Midlothian school closures five years ago, which turned my mind to the need to ensure that we had a better process. I hope that we are seeing the results of a debate that has been informed by many people over many years.

Rhona Brankin (Midlothian) (Lab): Does the member warmly welcome the creation of a brand new rural school at Middleton in Midlothian?

Fiona Hyslop: I am delighted to welcome any new school, 250 of which will be built and funded during the lifetime of this Government, and I am delighted to welcome that school in particular.

Hugh O'Donnell made an important point. The bill probably touches more of our constituencies and more of our constituents' interests than many other pieces of legislation that we consider in the Parliament. Today's debate has been informed by the experiences of many members—including Aileen Campbell, George Foulkes, Anne McLaughlin, Bob Doris and Elaine Smith—in dealing with issues related to school closures that have affected their constituents. School closures are rarely, if ever, happy experiences for people. Members' passion shows the bill's importance.

Members have indicated their clear support for the principles of the bill, and I welcome that. I recognise that there are a few points of detail that have attracted different views, and I look forward to discussing the detail at stage 2. We will, of course, be willing to consider constructive amendments and, as I signalled earlier, the Education, Lifelong Learning and Culture Committee's report suggests that we are largely of the same view on much of the bill. Looking forward to stage 2, it might be helpful if I were to clarify our thinking on the main issues that were raised in the stage 1 report.

The report asked the Government to consider extending the time that authorities have to notify ministers of a closure decision. The fact that the bill allows councils one day to do so reflects the reality that such decisions tend to become public knowledge almost immediately after they are taken. However, as I indicated in my opening speech, now that I have studied the stage 1 report, I am considering lodging an amendment on that point.

The committee raised a concern about a lack of clarity as regards the role of HMIE, which I would like to address. Currently, HMIE is only asked for a report on the 16 or so cases that are referred to ministers each year, which are not limited to closures but can include changes to the location of schools or their catchment areas. Under the bill, HMIE would be required to produce a written assessment of the educational aspects of all school consultation proposals, which would be

based on the inspector's professional assessment of the council's proposal paper, including the educational benefits statement and the issues that were raised during the consultation, either at the public meeting or in written responses. The HMIE report would form part of the council's consideration of the proposal when it made its decision. HMIE has confirmed that it has the resources and experience to do that, which should mitigate the need for me as minister to receive further advice during any call-in, as I will already have received an initial report from HMIE.

The second issue that was raised in the committee's conclusions relates to the three additional factors that the bill requires councils to consider prior to consulting on the closure of a rural school. I have already signalled that I think that there is a strong rationale for setting out specific safeguards for rural schools, the loss of which can have a disproportionately significant and adverse effect on the whole community. Alongside that is the need to establish a robust and comprehensive consultation framework for all school consultations, whether in urban or rural areas, and that is clearly set out in the bill.

The report expresses concern about the lack of clarity around the grounds for ministerial call-in and asks the Government to give the matter further consideration. As I said in my evidence, a decision to call in a case would focus on the process that the council had followed and whether it had taken proper account of a material consideration. I understand the concerns that have been expressed about what might constitute a material consideration, but as I made clear to the committee, I want to avoid constraining the grounds on which a case can be called in by providing a tick-box list.

I note the committee's practical and helpful suggestion that what constitutes a material consideration could be clarified in guidance. I hope that the committee will deal with that matter at stage 2, and I am happy to explore the idea of including the issue in guidance.

We intend to produce guidance on the educational benefits statement, the proposal paper's content, the methods of consultation with children and young people—in which regard we will engage with the children's commissioner in particular—notification practices, the timing of public meetings and the call-in criteria for a material consideration.

Bob Doris raised an important point about councils having entrenched views. The point of the bill is to ensure that we have dialogue and responsiveness in consultations. He also raised the issue of pre-consultation guidance. However, Aileen Campbell mentioned the issue of rumours spreading when there is no proper consultation

and a lack of information. The danger of a pre-consultation is that it would take place in a context in which there would not necessarily be robust information, which means that the danger of rumours spreading might be exacerbated.

Ken Macintosh raised Consumer Focus Scotland's suggestion that we should have a 12-week timescale. We have already moved from 28 days to six weeks, which is a 50 per cent increase, on top of the period for the preparation of the consultation report. I accept the committee's advice that we should make sure that we consider such proposals. In its stage 1 report, the committee said:

"The Committee believes, on balance, that the proposed six-week consultation period proposed in the Bill is sufficiently long, given the further periods for consideration built in to the overall process."

There is an issue about prolonging the experience of school closure, which has also been raised.

Elizabeth Smith and Claire Baker raised the important issue of accurate information. Those points were particularly well made. In relation to the proposal paper, it is vital that we ensure that, in any dispute that comes back to the issue of consultation being about a dialogue and responsiveness, any inaccuracies will be addressed as part of the process, as opposed to becoming what was described earlier as a year-long sore.

Ken Macintosh and Elizabeth Smith also referred to financial arrangements. They might appreciate that I cannot second-guess any review of grant-aided expenditure. However, I emphasise that this Government has repeatedly shown that we are a Government for all of Scotland, and we have repeatedly delivered support for rural Scotland. Indeed, when we give special attention to rural Scotland, we are criticised for discriminating in favour of rural Scotland. It is an important point, however, and, as I said in evidence to the committee, I will ensure that the Cabinet Secretary for Finance and Sustainable Growth is aware of those concerns.

This debate has been about agreement to the principles of the Schools (Consultation) (Scotland) Bill, and has been ably informed by people's experiences. As I said to Malcolm Chisholm, the consultations that are currently under way can be informed by the transition arrangements that are set out in schedule 3 to the bill, which are designed to ensure that people and councils understand where they stand in relation to on-going consultations.

I thank those who have contributed to the debate today and I also thank the committee for its careful, thorough and constructive consideration of the bill at stage 1.

The Scottish Government is committed to improving the standard of all school consultations—urban and rural—in partnership with local government. Additionally, we are committed to protecting our fragile rural and remote communities. Schools are often at the heart of such communities and, if closed, cannot easily be replaced by other public buildings. I emphasise again the economic value of jobs in rural communities and the importance of many schools in ensuring that there is support for the children of people who work in those jobs.

I believe that our proposals will lead to coherent, fair and transparent consultations that will command the trust and confidence of the public. As MSPs, we all know the heartache that can be part and parcel of any school closure consultation. If we can bring to Parliament a bill that will relieve that pressure and pain and ensure that we have a robust, accessible and comprehensive system, I think that we will be serving our constituents well.

I ask members to support the motion and agree to the general principles of the Schools (Consultation) (Scotland) Bill.

Committee of the Regions and the Regional Chamber of the Congress of Local and Regional Authorities of the Council of Europe (Membership)

16:54

The Deputy Presiding Officer (Alasdair Morgan): The next item of business is consideration of motion S3M-4757, in the name of Bruce Crawford, on membership of the Committee of the Regions and membership of the regional chamber of the Congress of Local and Regional Authorities of the Council of Europe.

Motion moved,

That the Parliament endorses the Scottish Government's proposal to nominate, as a representative of the Parliament, Jamie Hepburn MSP as a full member on the UK delegation to the regional chamber of the Congress of Local and Regional Authorities of the Council of Europe, and Stewart Maxwell MSP and Irene Oldfather MSP as full members and Nicol Stephen MSP and Ted Brocklebank MSP as alternate members on the UK delegation to the Committee of the Regions for the remainder of the current session to 2012, and notes that the representation from local government to the Committee of the Regions will be Councillors Corrie McChord and Roger Knox as full members and Councillors Graham Garvie and Sandy Park as alternate members.—[*Bruce Crawford.*]

The Deputy Presiding Officer: The question on the motion will be put at decision time.

Business Motion

16:55

The Deputy Presiding Officer (Alasdair Morgan): The next item of business is consideration of business motion S3M-4755, in the name of Bruce Crawford, on behalf of the Parliamentary Bureau, setting out a timetable for stage 1 of the Control of Dogs (Scotland) Bill.

Motion moved,

That the Parliament agrees that consideration of the Control of Dogs (Scotland) Bill at Stage 1 be completed by 29 January 2010.—[Bruce Crawford.]

Motion agreed to.

16:55

Meeting suspended until 17:00.

17:00

On resuming—

Decision Time

The Presiding Officer (Alex Fergusson): There are six questions to be put as a result of today's business.

The first question is, that amendment S3M-4748.1.1, in the name of Bill Aitken, which seeks to amend amendment S3M-4748.1, in the name of Richard Baker, on the decision on Abdelbaset Ali Mohamed al-Megrahi, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For

Aitken, Bill (Glasgow) (Con)
 Alexander, Ms Wendy (Paisley North) (Lab)
 Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brown, Gavin (Lothians) (Con)
 Brown, Robert (Glasgow) (LD)
 Brownlee, Derek (South of Scotland) (Con)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Carlaw, Jackson (West of Scotland) (Con)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Margaret (Glasgow Baillieston) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Finnie, Ross (West of Scotland) (LD)
 Foulkes, George (Lothians) (Lab)
 Glen, Marlyn (North East Scotland) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)
 Goldie, Annabel (West of Scotland) (Con)
 Gordon, Charlie (Glasgow Cathcart) (Lab)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Henry, Hugh (Paisley South) (Lab)
 Hume, Jim (South of Scotland) (LD)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Johnstone, Alex (North East Scotland) (Con)
 Kelly, James (Glasgow Rutherglen) (Lab)
 Kerr, Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Lamont, John (Roxburgh and Berwickshire) (Con)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Ken (Eastwood) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McArthur, Liam (Orkney) (LD)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Tom (Hamilton South) (Lab)
 McConnell, Jack (Motherwell and Wishaw) (Lab)
 McGrigor, Jamie (Highlands and Islands) (Con)
 McInnes, Alison (North East Scotland) (LD)
 McLetchie, David (Edinburgh Pentlands) (Con)
 McMahan, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)

Milne, Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Mulligan, Mary (Linlithgow) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Elaine (Dumfries) (Lab)
 O'Donnell, Hugh (Central Scotland) (LD)
 Oldfather, Irene (Cunninghame South) (Lab)
 Park, John (Mid Scotland and Fife) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Scott, Tavish (Shetland) (LD)
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Elizabeth (Mid Scotland and Fife) (Con)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stewart, David (Highlands and Islands) (Lab)
 Stone, Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Whitton, David (Strathkelvin and Bearsden) (Lab)

AGAINST

Adam, Brian (Aberdeen North) (SNP)
 Allan, Alasdair (Western Isles) (SNP)
 Brown, Keith (Ochil) (SNP)
 Campbell, Aileen (South of Scotland) (SNP)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Coffey, Willie (Kilmarnock and Loudoun) (SNP)
 Constance, Angela (Livingston) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Don, Nigel (North East Scotland) (SNP)
 Doris, Bob (Glasgow) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 FitzPatrick, Joe (Dundee West) (SNP)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gibson, Rob (Highlands and Islands) (SNP)
 Grahame, Christine (South of Scotland) (SNP)
 Harper, Robin (Lothians) (Green)
 Harvie, Christopher (Mid Scotland and Fife) (SNP)
 Harvie, Patrick (Glasgow) (Green)
 Hepburn, Jamie (Central Scotland) (SNP)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Adam (South of Scotland) (SNP)
 Kidd, Bill (Glasgow) (SNP)
 Lochhead, Richard (Moray) (SNP)
 MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)
 Marwick, Tricia (Central Fife) (SNP)
 Mather, Jim (Argyll and Bute) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 Maxwell, Stewart (West of Scotland) (SNP)
 McKee, Ian (Lothians) (SNP)
 McKelvie, Christina (Central Scotland) (SNP)
 McLaughlin, Anne (Glasgow) (SNP)
 McMillan, Stuart (West of Scotland) (SNP)
 Morgan, Alasdair (South of Scotland) (SNP)
 Neil, Alex (Central Scotland) (SNP)
 Paterson, Gil (West of Scotland) (SNP)
 Robison, Shona (Dundee East) (SNP)
 Russell, Michael (South of Scotland) (SNP)
 Salmond, Alex (Gordon) (SNP)
 Somerville, Shirley-Anne (Lothians) (SNP)
 Stevenson, Stewart (Banff and Buchan) (SNP)

Sturgeon, Nicola (Glasgow Govan) (SNP)
 Swinney, John (North Tayside) (SNP)
 Thompson, Dave (Highlands and Islands) (SNP)
 Watt, Maureen (North East Scotland) (SNP)
 Welsh, Andrew (Angus) (SNP)
 White, Sandra (Glasgow) (SNP)
 Wilson, Bill (West of Scotland) (SNP)
 Wilson, John (Central Scotland) (SNP)

ABSTENTIONS

MacDonald, Margo (Lothians) (Ind)

The Presiding Officer: The result of the division is: For 73, Against 50, Abstentions 1.

Amendment agreed to.

The Presiding Officer: The second question is, that amendment 4748.1.2, in the name of Robert Brown, which also seeks to amend amendment S3M-4748.1, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

FOR

Aitken, Bill (Glasgow) (Con)
 Alexander, Ms Wendy (Paisley North) (Lab)
 Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brown, Gavin (Lothians) (Con)
 Brown, Robert (Glasgow) (LD)
 Brownlee, Derek (South of Scotland) (Con)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Carlaw, Jackson (West of Scotland) (Con)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Margaret (Glasgow Baillieston) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Finnie, Ross (West of Scotland) (LD)
 Foulkes, George (Lothians) (Lab)
 Glen, Marilyn (North East Scotland) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)
 Goldie, Annabel (West of Scotland) (Con)
 Gordon, Charlie (Glasgow Cathcart) (Lab)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Henry, Hugh (Paisley South) (Lab)
 Hume, Jim (South of Scotland) (LD)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Johnstone, Alex (North East Scotland) (Con)
 Kelly, James (Glasgow Rutherglen) (Lab)
 Kerr, Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Lamont, John (Roxburgh and Berwickshire) (Con)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Ken (Eastwood) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McArthur, Liam (Orkney) (LD)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Tom (Hamilton South) (Lab)
 McConnell, Jack (Motherwell and Wishaw) (Lab)
 McGrigor, Jamie (Highlands and Islands) (Con)
 McInnes, Alison (North East Scotland) (LD)
 McLetchie, David (Edinburgh Pentlands) (Con)
 McMahan, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Duncan (Greenock and Inverclyde) (Lab)

McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Milne, Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Mulligan, Mary (Linlithgow) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Elaine (Dumfries) (Lab)
 O'Donnell, Hugh (Central Scotland) (LD)
 Oldfather, Irene (Cunninghame South) (Lab)
 Park, John (Mid Scotland and Fife) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Scott, Tavish (Shetland) (LD)
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Elizabeth (Mid Scotland and Fife) (Con)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stewart, David (Highlands and Islands) (Lab)
 Stone, Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Whitton, David (Strathkelvin and Bearsden) (Lab)

AGAINST

Adam, Brian (Aberdeen North) (SNP)
 Allan, Alasdair (Western Isles) (SNP)
 Brown, Keith (Ochil) (SNP)
 Campbell, Aileen (South of Scotland) (SNP)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Coffey, Willie (Kilmarnock and Loudoun) (SNP)
 Constance, Angela (Livingston) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Don, Nigel (North East Scotland) (SNP)
 Doris, Bob (Glasgow) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 FitzPatrick, Joe (Dundee West) (SNP)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gibson, Rob (Highlands and Islands) (SNP)
 Grahame, Christine (South of Scotland) (SNP)
 Harper, Robin (Lothians) (Green)
 Harvie, Christopher (Mid Scotland and Fife) (SNP)
 Harvie, Patrick (Glasgow) (Green)
 Hepburn, Jamie (Central Scotland) (SNP)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Adam (South of Scotland) (SNP)
 Kidd, Bill (Glasgow) (SNP)
 Lochhead, Richard (Moray) (SNP)
 MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)
 Marwick, Tricia (Central Fife) (SNP)
 Mather, Jim (Argyll and Bute) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 Maxwell, Stewart (West of Scotland) (SNP)
 McKee, Ian (Lothians) (SNP)
 McKelvie, Christina (Central Scotland) (SNP)
 McLaughlin, Anne (Glasgow) (SNP)
 McMillan, Stuart (West of Scotland) (SNP)
 Morgan, Alasdair (South of Scotland) (SNP)
 Neil, Alex (Central Scotland) (SNP)
 Paterson, Gil (West of Scotland) (SNP)
 Robison, Shona (Dundee East) (SNP)
 Russell, Michael (South of Scotland) (SNP)
 Salmond, Alex (Gordon) (SNP)

Somerville, Shirley-Anne (Lothians) (SNP)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Sturgeon, Nicola (Glasgow Govan) (SNP)
 Swinney, John (North Tayside) (SNP)
 Thompson, Dave (Highlands and Islands) (SNP)
 Watt, Maureen (North East Scotland) (SNP)
 Welsh, Andrew (Angus) (SNP)
 White, Sandra (Glasgow) (SNP)
 Wilson, Bill (West of Scotland) (SNP)
 Wilson, John (Central Scotland) (SNP)

ABSTENTIONS

MacDonald, Margo (Lothians) (Ind)

The Presiding Officer: The result of the division is: For 73, Against 50, Abstentions 1.

Amendment agreed to.

The Presiding Officer: The third question is, that amendment S3M-4748.1, in the name of Richard Baker, as amended, which seeks to amend motion S3M-4748, in the name of Kenny MacAskill, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

FOR

Aitken, Bill (Glasgow) (Con)
 Alexander, Ms Wendy (Paisley North) (Lab)
 Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brown, Gavin (Lothians) (Con)
 Brown, Robert (Glasgow) (LD)
 Brownlee, Derek (South of Scotland) (Con)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Carlaw, Jackson (West of Scotland) (Con)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Margaret (Glasgow Baillieston) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Finnie, Ross (West of Scotland) (LD)
 Foulkes, George (Lothians) (Lab)
 Glen, Marlyn (North East Scotland) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)
 Goldie, Annabel (West of Scotland) (Con)
 Gordon, Charlie (Glasgow Cathcart) (Lab)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Henry, Hugh (Paisley South) (Lab)
 Hume, Jim (South of Scotland) (LD)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Johnstone, Alex (North East Scotland) (Con)
 Kelly, James (Glasgow Rutherglen) (Lab)
 Kerr, Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Lamont, John (Roxburgh and Berwickshire) (Con)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Ken (Eastwood) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McArthur, Liam (Orkney) (LD)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Tom (Hamilton South) (Lab)
 McConnell, Jack (Motherwell and Wishaw) (Lab)
 McGrigor, Jamie (Highlands and Islands) (Con)

McInnes, Alison (North East Scotland) (LD)
 McLetchie, David (Edinburgh Pentlands) (Con)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Milne, Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Mulligan, Mary (Linlithgow) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Elaine (Dumfries) (Lab)
 O'Donnell, Hugh (Central Scotland) (LD)
 Oldfather, Irene (Cunninghame South) (Lab)
 Park, John (Mid Scotland and Fife) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Scott, Tavish (Shetland) (LD)
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Elizabeth (Mid Scotland and Fife) (Con)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stewart, David (Highlands and Islands) (Lab)
 Stone, Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Whitton, David (Strathkelvin and Bearsden) (Lab)

AGAINST

Adam, Brian (Aberdeen North) (SNP)
 Allan, Alasdair (Western Isles) (SNP)
 Brown, Keith (Ochil) (SNP)
 Campbell, Aileen (South of Scotland) (SNP)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Coffey, Willie (Kilmarnock and Loudoun) (SNP)
 Constance, Angela (Livingston) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Don, Nigel (North East Scotland) (SNP)
 Doris, Bob (Glasgow) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 FitzPatrick, Joe (Dundee West) (SNP)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gibson, Rob (Highlands and Islands) (SNP)
 Grahame, Christine (South of Scotland) (SNP)
 Harper, Robin (Lothians) (Green)
 Harvie, Christopher (Mid Scotland and Fife) (SNP)
 Harvie, Patrick (Glasgow) (Green)
 Hepburn, Jamie (Central Scotland) (SNP)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Adam (South of Scotland) (SNP)
 Kidd, Bill (Glasgow) (SNP)
 Lochhead, Richard (Moray) (SNP)
 MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)
 Marwick, Tricia (Central Fife) (SNP)
 Mather, Jim (Argyll and Bute) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 Maxwell, Stewart (West of Scotland) (SNP)
 McKee, Ian (Lothians) (SNP)
 McKelvie, Christina (Central Scotland) (SNP)
 McLaughlin, Anne (Glasgow) (SNP)
 McMillan, Stuart (West of Scotland) (SNP)
 Morgan, Alasdair (South of Scotland) (SNP)
 Neil, Alex (Central Scotland) (SNP)

Paterson, Gil (West of Scotland) (SNP)
 Robison, Shona (Dundee East) (SNP)
 Russell, Michael (South of Scotland) (SNP)
 Salmond, Alex (Gordon) (SNP)
 Somerville, Shirley-Anne (Lothians) (SNP)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Sturgeon, Nicola (Glasgow Govan) (SNP)
 Swinney, John (North Tayside) (SNP)
 Thompson, Dave (Highlands and Islands) (SNP)
 Watt, Maureen (North East Scotland) (SNP)
 Welsh, Andrew (Angus) (SNP)
 White, Sandra (Glasgow) (SNP)
 Wilson, Bill (West of Scotland) (SNP)
 Wilson, John (Central Scotland) (SNP)

ABSTENTIONS

MacDonald, Margo (Lothians) (Ind)

The Presiding Officer: The result of the division is: For 73, Against 50, Abstentions 1.

Amendment, as amended, agreed to.

The Presiding Officer: The fourth question is, that motion S3M-4748, in the name of Kenny MacAskill, on the decision on Abdelbaset Ali Mohamed al-Megrahi, as amended, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

FOR

Aitken, Bill (Glasgow) (Con)
 Alexander, Ms Wendy (Paisley North) (Lab)
 Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brown, Gavin (Lothians) (Con)
 Brown, Robert (Glasgow) (LD)
 Brownlee, Derek (South of Scotland) (Con)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Carlaw, Jackson (West of Scotland) (Con)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Margaret (Glasgow Baillieston) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Finnie, Ross (West of Scotland) (LD)
 Foulkes, George (Lothians) (Lab)
 Glen, Marlyn (North East Scotland) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)
 Goldie, Annabel (West of Scotland) (Con)
 Gordon, Charlie (Glasgow Cathcart) (Lab)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Henry, Hugh (Paisley South) (Lab)
 Hume, Jim (South of Scotland) (LD)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Johnstone, Alex (North East Scotland) (Con)
 Kelly, James (Glasgow Rutherglen) (Lab)
 Kerr, Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Lamont, John (Roxburgh and Berwickshire) (Con)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Ken (Eastwood) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McArthur, Liam (Orkney) (LD)

McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Tom (Hamilton South) (Lab)
 McConnell, Jack (Motherwell and Wishaw) (Lab)
 McGrigor, Jamie (Highlands and Islands) (Con)
 McInnes, Alison (North East Scotland) (LD)
 McLetchie, David (Edinburgh Pentlands) (Con)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Milne, Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Mulligan, Mary (Linlithgow) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Elaine (Dumfries) (Lab)
 O'Donnell, Hugh (Central Scotland) (LD)
 Oldfather, Irene (Cunninghame South) (Lab)
 Park, John (Mid Scotland and Fife) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Scott, Tavish (Shetland) (LD)
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Elizabeth (Mid Scotland and Fife) (Con)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stewart, David (Highlands and Islands) (Lab)
 Stone, Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Whitton, David (Strathkelvin and Bearsden) (Lab)

AGAINST

Adam, Brian (Aberdeen North) (SNP)
 Allan, Alasdair (Western Isles) (SNP)
 Brown, Keith (Ochil) (SNP)
 Campbell, Aileen (South of Scotland) (SNP)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Coffey, Willie (Kilmarnock and Loudoun) (SNP)
 Constance, Angela (Livingston) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Don, Nigel (North East Scotland) (SNP)
 Doris, Bob (Glasgow) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 FitzPatrick, Joe (Dundee West) (SNP)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gibson, Rob (Highlands and Islands) (SNP)
 Grahame, Christine (South of Scotland) (SNP)
 Harper, Robin (Lothians) (Green)
 Harvie, Christopher (Mid Scotland and Fife) (SNP)
 Harvie, Patrick (Glasgow) (Green)
 Hepburn, Jamie (Central Scotland) (SNP)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Adam (South of Scotland) (SNP)
 Kidd, Bill (Glasgow) (SNP)
 Lochhead, Richard (Moray) (SNP)
 MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)
 Marwick, Tricia (Central Fife) (SNP)
 Mather, Jim (Argyll and Bute) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 Maxwell, Stewart (West of Scotland) (SNP)
 McKee, Ian (Lothians) (SNP)
 McKelvie, Christina (Central Scotland) (SNP)

McLaughlin, Anne (Glasgow) (SNP)
 McMillan, Stuart (West of Scotland) (SNP)
 Morgan, Alasdair (South of Scotland) (SNP)
 Neil, Alex (Central Scotland) (SNP)
 Paterson, Gil (West of Scotland) (SNP)
 Robison, Shona (Dundee East) (SNP)
 Russell, Michael (South of Scotland) (SNP)
 Salmond, Alex (Gordon) (SNP)
 Somerville, Shirley-Anne (Lothians) (SNP)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Sturgeon, Nicola (Glasgow Govan) (SNP)
 Swinney, John (North Tayside) (SNP)
 Thompson, Dave (Highlands and Islands) (SNP)
 Watt, Maureen (North East Scotland) (SNP)
 Welsh, Andrew (Angus) (SNP)
 White, Sandra (Glasgow) (SNP)
 Wilson, Bill (West of Scotland) (SNP)
 Wilson, John (Central Scotland) (SNP)

ABSTENTIONS

MacDonald, Margo (Lothians) (Ind)

The Presiding Officer: The result of the division is: For 73, Against 50, Abstentions 1.

Motion, as amended, agreed to,

That the Parliament notes the decisions by the Cabinet Secretary for Justice to reject the application by the Libyan Government to transfer Abdelbaset Ali Mohamed Al Megrahi under the prisoner transfer agreement between the United Kingdom and Libya and to release Mr Al Megrahi on compassionate grounds; believes that the process of making this crucial decision was mishandled by the Cabinet Secretary for Justice; believes that it was wrong for the Cabinet Secretary for Justice to meet Abdelbaset Ali Mohamed Al Megrahi in prison while considering his application for compassionate release to Libya and that this potentially sets an inappropriate precedent; also believes that it was unacceptable that the media was made aware of the decision a week before it was formally announced; does not accept that the Cabinet Secretary for Justice received or sought sufficient medical advice to make his judgement on Megrahi's prognosis; further believes that the Cabinet Secretary for Justice did not sufficiently explore options to take account of Megrahi's illness other than compassionate release to Libya, in particular the opportunities for compassionate release within Scotland; believes that the announcement should have been made to the Parliament rather than to a press conference; considers that justice and compassion for the victims' families have not been served by this process; recognises the ability of both the Scottish police and the NHS in Scotland on the basis of past performance to have supported the release of Mr Al Megrahi to an appropriate location and regrets that this was not adequately explored; recognises that Scotland's international reputation has been damaged not simply by the decision to release Megrahi on compassionate grounds to Libya but also because of the way that taking the decision was mishandled, and, given the mishandling of this process by the Cabinet Secretary for Justice, does not agree with his decision to return Megrahi to Libya on compassionate release.

The Presiding Officer: The fifth question is, that motion S3M-4734, in the name of Fiona Hyslop, on the Schools (Consultation) (Scotland) Bill, be agreed to.

Motion agreed to,

That the Parliament agrees to the general principles of the Schools (Consultation) (Scotland) Bill.

around, but they are in abundance within the Johnnie Walker workers. Surely this is no way to treat such people.

With support from the unions and the community, the cross-party team, led by Councillor Dougie Reid, who cannot be with us today, and Councillors McKay and Cook, has been tireless in its efforts. Des Browne MP has also made a great contribution. Our petition to Diageo contains thousands of signatures from Kilmarnock and all across the globe.

I remind Diageo that Johnnie Walker was a real person, not some corporate gimmick. In 1820, he set up his shop in Kilmarnock and started blending whiskies. These were the forerunners of red label and, of course, the famous striding man, who, with his able assistants, graces us with his presence today.

Johnnie Walker quickly became a world-class product, and the fact that its Kilmarnock roots are still there for all to see is a source of pride for many. In the hands of a company concerned about product integrity, heritage and tradition, such roots should be regarded as a major strength, but Diageo would have us believe that no one cares where things come from. The only way is to make things cheaper and wherever we can. According to Diageo's description of the problem, there are 38 lines when only 28 are needed, and three plants where two would do. Oh—and it tells us that it contributes £30 every second to the UK balance of trade.

In the briefing that Diageo circulated yesterday, I counted about 25 figures in support of its case. However, one figure that it missed out was the small matter of its £2.5 billion profit. How on earth could that have escaped its notice? Did it not think MSPs would know that its profits amount to £80 per second?

Oscar Wilde once said:

"Whenever a man does a thoroughly stupid thing, it is always from the noblest motives".

There might be shades of that in the proposals that Mr Walsh has endorsed. The more Diageo states its case, the more ridiculous it sounds, set against the backdrop of such profits.

Last week was the defining moment in the campaign to keep Johnnie Walker in Kilmarnock. I congratulated the company on its results, and Mr Walsh was right to say that he would not apologise for running a profitable company. However, when we set Diageo's profits against the social and economic consequences of its closure plan, we are entitled to ask the chief officer to reconsider the damaging proposals. Diageo's latest public relations moves attempt to drive a wedge between communities—between Kilmarnock, Hurlford and

Port Dundas on the one hand and Shieldhall and Leven on the other.

The case for the closures fell apart with the profits announcement. For such a profitable company, there is surely more than one way forward. We need to hear why Diageo thinks that it is right to put 700 loyal Kilmarnock workers on the street and to ditch 189 years of history and heritage without blinking an eye. Diageo has made it clear that the closure plan is not a response to current economic conditions but part of a long-term strategy. From beyond Kilmarnock, concerns have been raised about Diageo's strategy and the future direction of the Scotch whisky industry. The Parliament must understand where that vital industry is going. I have asked the Economy, Energy and Tourism Committee to conduct an inquiry on that, and I look forward to receiving support for that request.

Johnnie Walker grew and prospered for 177 years before Diageo, and Diageo is simply the present custodian. Properly managed, Johnnie Walker will survive after even Diageo has gone. I say to Mr Walsh that he should not let Diageo become another corporate entity that knows the price of everything but the value of nothing. I ask him to look beyond the numbers to see the damage that will be done to Kilmarnock, to Johnnie Walker and to Diageo. When the going was tough for your company, Mr Walsh, your workers did not walk out on you. I am asking you now not to walk out on them.

I started with Rab Wilson's poem, so perhaps it is appropriate to end with a clip from Robert Burns, who wrote:

"O wad some Pow'r the giftie gie us
To see *oursels* as *others* see us!
It wad frae monie a blunder free us".

If Diageo pays heed to the campaign and the debate, I believe that we can help it to avoid a spectacular blunder. Johnnie Walker is bigger than Diageo and its Kilmarnock history cannot be erased. Diageo—don't walk out on Killie.

17:13

Patricia Ferguson (Glasgow Maryhill) (Lab): I thank Willie Coffey and congratulate him on securing the debate, which gives members the opportunity to express publicly their support for the Diageo workers, many of whom are with us in the public gallery this evening.

There has been a distillery at Port Dundas for almost 200 years, but if Diageo has its way that proud history will come to an end and some 200 people will lose their jobs. Last week, we had the announcement of Diageo's profit for the year, of £2.02 billion. It was a drop from the previous year but, given the worldwide recession, it is a profit

margin that most companies would be proud of, but Diageo seems to have overlooked the very people who make its profits possible—its workforce. I praise the workforce at Port Dundas and Kilmarnock, and those at Leven, Shieldhall and Hurlford, too, for the determination and dignity that they have shown throughout the campaign to retain the jobs. I also praise them for their commitment to Diageo over many years—a commitment that has made the company the world leader that it is today.

Why close the Port Dundas plant? I must say that the case is less than convincing and that the briefing that Diageo provided for MSPs does not make a compelling business case. Port Dundas sits in a prime position with easy access to the motorway network around Glasgow, which is not the case for all distilleries. It sits on a 22 acre site with room for expansion but, in recent years, investment in the site and the plant has been limited to a new computerised operational system and a £700,000 gas compressor, which was delivered in June but has now been mothballed.

Diageo seems intent on using spirit from the North British Distillery Company here in Edinburgh, in which it has a half share. The other half is owned by the rival Edrington Group. Diageo currently takes approximately 17 million litres per annum from the North British distillery, but it plans to increase that. It seems to place its commitment to North British higher on its list of priorities than its commitment to its own plant at Port Dundas, which produces 40 million litres per annum and has the capacity to produce more.

Diageo also wishes to move to a new distilling plant in Fife, but it assumes, first, that the plant will be up and running with no hitches and on time and, secondly, that the plant will never need to be shut down unexpectedly. Any prudent manager would surely ask, “Where is the back-up?” The answer from Diageo seems to be, “There isn’t any.” If we add in the industry predictions of rapid growth in demand for whisky from China and India in the coming years, it seems very strange that Diageo should wish to limit its potential for growth when all other distillers will be looking to expand their market share.

Given the consequences of the proposals, it is regrettable that the company did not accept the workforce’s sensible proposal—a point that Iain Gray has emphasised—that the consultation period should be extended beyond the statutory minimum. How much faith should we place in Diageo’s consultation? Does it want to hear alternatives, or is the matter a done deal? When I put that question to management back in early July, I was told that the proposal was the company’s final decision and was a done deal. As recently as last Friday, senior management at Port

Dundas had a meeting with the workforce at which the workers were told that closure was a done deal. Not only is that cynical during a consultation process, the fact that it happened in the absence of union representatives raises serious questions about the Diageo management’s commitment to the consultation process and its willingness to consider other proposals seriously.

Despite the limited time that there has been for scrutinising the Diageo business plan, other options are available. Despite the many months over which Diageo formulated its closure plans, the short period for the consultation has allowed other options to be identified. Now is the time for those options to be refined and put to Diageo. The Cabinet Secretary for Finance and Sustainable Growth will no doubt have those in mind when he meets Diageo tomorrow. A lot rests on that dialogue, so the cabinet secretary has our best wishes as he prepares for that meeting.

There is concern that the retention of jobs in Port Dundas and Kilmarnock might be to the detriment of jobs in Fife, but I do not believe that that is the case; we are fighting for the retention of high-quality, skilled, permanent jobs, not the outsourced, short-term or temporary jobs that might be on offer. That is recognised by the unions and by the workforce in Diageo sites throughout Scotland and it is why I want to see alternative proposals that promote investment in the current jobs, both for existing workers and for future generations of Scotch whisky workers in Port Dundas and Kilmarnock and throughout the Diageo estate.

The Deputy Presiding Officer: You must finish now.

Patricia Ferguson: I want Diageo to show the same commitment to its workforce that its workers have shown to their employer. That its workforce is what has made Diageo such a success is recognised across the world. I sincerely hope that the support that has been shown to the workers by the public and by parliamentarians will make Diageo think again. I hope that Diageo will see the sense of retaining and investing in jobs in Port Dundas and in Kilmarnock. I wish the cabinet secretary well in his meeting tomorrow.

The Deputy Presiding Officer: I remind members that speeches should be of four minutes. I will extend the time for the debate at some point later, if the minister agrees.

17:19

Kenneth Gibson (Cunninghame North) (SNP): I congratulate Willie Coffey on securing this valuable debate on an issue that is of great importance to people not only in Ayrshire and Glasgow but throughout Scotland. Willie Coffey

has been at the forefront of the campaign: he has lived, breathed and slept the Johnnie Walker fight for months now.

I have been involved to a lesser degree as one of three MSPs—including Willie Coffey and John Scott—who, along with Des Browne MP, attended the petition launch on 3 July. I marched through Kilmarnock on 26 July with colleagues of all parties and helped to collect 1,358 signatures in North Ayrshire against the proposed closure. In Kilwinning, Largs and Saltcoats, folk queued up to support the Kilmarnock work force—not just locals, but lovers of Johnnie Walker from Canada, Australia, France and Luxembourg who were shocked at this turn of events.

Scotland has a long and proud tradition of whisky production, which is envied and enjoyed the world over. The industry is synonymous with our nation, and its heritage and exceptional quality are second to none.

Since 1933, whisky has been defined and protected by law, which emphasises that for whisky to be labelled Scotch whisky, it must be produced and matured in Scotland for at least three years. It has also been given European Union protected geographical indicator status, which assures consumers that what claims to be Scotch is the genuine article. That is the same status that is afforded to other world-famous produce, such as champagne and Aberdeen Angus beef.

It is no coincidence that the maintenance of such strict guidelines, coupled with an adherence to traditional techniques and specialist knowledge, all of which ensure unparalleled quality and excellence, mean that Scotch whisky has consistently been one of our greatest and most successful exports, which now accounts for more than £4 billion annually. Scotch is regularly responsible for a quarter of all UK food and drink exports, and Johnnie Walker is the most successful of all.

Why does Diageo, which is a company that made profits of more than £2 billion this year alone, wish to tamper with what is clearly—excuse the pun—a winning blend?

The Scotch whisky industry has already lost nearly 1,400 jobs over the past decade. There have been knock-on effects for those who work in the industry—there are 41,000 in Scotland, of whom more than three quarters are employed indirectly. Further job cuts would have catastrophic effects not only for the industry but for Ayrshire—perhaps 3,000 jobs may be lost in the county—which already has an unemployment rate that is higher than the Scottish average.

To allow the proposed closures to go ahead would be to betray a hard-working and committed

workforce that often includes more than one generation of the same family and that has made Johnnie Walker the highly profitable global brand that it is today. Every business must work hard to remain competitive; no business does that by forgetting its roots.

Moving the bottling of Johnnie Walker from Kilmarnock would not only impact on the workers who were thrown on the scrapheap; it would have negative implications for the overall image of Scotch whisky, which in turn would be undesirable and self-defeating for Diageo.

Although the carrot of 400 jobs in Leven has been dangled as part of a divide-and-rule strategy, it is scant consolation to the Kilmarnock, Hurlford and Port Dundas workers. There is an implied threat from Diageo that jobs could ultimately leave Scotland altogether.

In previous years, whisky producers attempted to cut costs by bottling the produce abroad. Ultimately, exported produce became vulnerable to adulteration and contamination, not to mention competitors using the far superior Scottish produce to bulk up their local brew. Surely the prospect of sullyng the name of Scotch whisky, which trades on its proud heritage, tradition, excellence and quality, is not a risk worth taking and it could only have negative repercussions for Diageo.

Article 7(1) of the draft Scotch Whisky Regulations 2009 produced by the Department for Environment, Food and Rural Affairs, which are due to come into force on St Andrew's day, state:

“A person must not label, package, sell, advertise or promote a drink in any other way that creates a likelihood of confusion on the part of the public as to whether the drink is Scotch whisky.”

Surely if malt whisky cannot be branded Scotch unless it is bottled in Scotland, the legislation should be extended to include all whisky that seeks to be labelled “Scotch”.

Finance secretary John Swinney has established a task force to build the case to reverse Diageo's proposals. The task now is to take the evidence received from the consultants to build an alternative proposition, which Scottish Enterprise will take forward for discussion with Diageo. The focus of that alternative will be to protect employment at Port Dundas, Kilmarnock or Hurlford, subject to rigorous preparation by Scottish Enterprise, which is working with trade unions and local authorities.

Diageo must stick to its word and await the alternative business proposal to be put forward by the Scottish Government before it makes any decisions. I am hopeful that we can still persuade the company to work with us to secure a successful future for Ayrshire and Glasgow.

The Deputy Presiding Officer: I call David Whitton, to be followed by Linda Fabiani.

17:24

David Whitton (Strathkelvin and Bearsden) (Lab): Thank you for calling me so early in the debate, Presiding Officer. I apologise to other speakers, because I will be unable to stay until the end of the debate.

I wish to focus my remarks on the Port Dundas distillery, which faces total closure. Many of those who face redundancy are from my constituency.

Like other members in the chamber, I received a copy of the briefing note from Diageo, which attempted to justify its position and which makes interesting reading. As Mr Coffey has pointed out, Diageo is a profitable company; it makes a significant contribution to the Scottish and UK economy. That is precisely the point. The board of directors do not make that profit by themselves—although they are handsomely rewarded for their performance—they are part of the Diageo team, and the efforts of workers in places such as Kilmarnock, Port Dundas and Leven are also crucial to the company's productivity and profitability.

The Diageo briefing says that the company spends £500 million—£0.5 billion—each year on the promotion of brands that are made in Scotland. I ask members to note those words: "made in Scotland"—distilled and bottled here, in the home of Scotch whisky.

Two years ago, Richard Bedford, the grain distilling director for Diageo, told a meeting that was attended by more than 200 workers that the company had a demand for 175 million litres of whisky annually. At the time, Cameron Bridge, in Fife, was producing 66 million litres and Port Dundas was producing around 40 million litres, so everyone thought that there was scope for increased production. The company is investing around £65 million to increase production at Cameron Bridge to 105 million litres, but that will not come on stream for another two years. Now, Diageo is saying that it does not need the Port Dundas distillery. What happened to those demand predictions? The company blames the global recession, yet I am told that the market for whisky in India is increasing by 6 per cent per annum—the equivalent of 6 million cases of whisky a year.

The Fife distillery is to be powered by a new biomass plant that has still to be commissioned, yet Diageo wants to put all its distillery eggs in the one basket in Fife. As Patricia Ferguson asked, where is the back-up? As we heard from her, the answer is here, in Edinburgh. Diageo holds a 50 per cent stake in the North British Distillery

Company distillery at Murrayfield. The other 50 per cent is owned by its rival, the Edrington Group. Two Diageo directors are on the board of Lothian Distillers, the operator of that distillery. At present, the 60 million-plus litres that are produced there are split—one third goes to Diageo, one third goes to the Edrington Group and one third goes for sale on the open market—but there are reports that the distillery will stop selling to the open market and that Diageo will take two thirds of the output—roughly 40 million litres. By coincidence, that is nearly equivalent to the output of the Port Dundas distillery. If Diageo were not to take that output, there would be no reason to close Port Dundas but, according to the BDO Stoy Hayward report, the company has ruled out that option, just as it has ruled out selling Port Dundas despite its belief that it is surplus to requirements. It is estimated that pulling out of the joint venture will cost around £20 million, which is roughly the same amount that would be required to modernise the Port Dundas distillery and keep it and its jobs in Glasgow. I am told by the Port Dundas workers that, with some investment, they could increase capacity by at least another 5 million litres a year.

The workers at Port Dundas have proved their worth and deserve a stay of execution for at least two years, to see how the market develops and until the new facility at Cameron Bridge is ready for production. By then, if the £500 million brand campaign bears fruit and if sales in places such as India, China and Russia continue to increase, the closure of a productive distillery such as that in Port Dundas could be seen to have been a hasty decision. As Mr Coffey said, it is still not too late for Diageo to change its mind.

17:27

Linda Fabiani (Central Scotland) (SNP): As a Central Scotland MSP who is concerned for the future of Kilmarnock following Diageo's proposals, I wish that the debate were not necessary. Nevertheless, I thank my colleague, Willie Coffey, for initiating the debate and for initiating—with Kilmarnock Football Club—the petition that is moving towards its aim of attracting 100,000 signatures. The wide spread of signatures that the petition has received from all around the globe emphasises the reach of the Johnnie Walker brand.

East Ayrshire Council, too, has been extremely effective in developing a response to Diageo's proposals. Councillor Dougie Reid and his team, with the support of opposition group leaders and their respective teams, have provided important leadership in the community's response to the threat to the local economy. The threat to the local economy is major—a fact that has been recognised and acted on by the Cabinet Secretary

for Finance and Sustainable Growth and by the Scottish Government.

In questions on the cabinet secretary's earlier statement on Diageo, I spoke of the importance of heritage and provenance to the premium brand that is Scotch whisky. The importance of the Johnnie Walker brand was a feature of the speeches that we heard from Willie Coffey and other members in the debate. The whole Scotch whisky industry is widely respected around the globe—its reputation has been hard fought for and built up over many years.

Recognising the presence of whisky in the international market, I was surprised to see the analysis that was carried out by Donald Blair, which highlighted the poor rate of growth in the production of whisky since the 1970s. Apart from a short upswing in the lead-up to the recession, growth has averaged no more than about 1 per cent per annum for the past 25 to 30 years. Diageo's decision to shed such a large number of jobs has turned attention to the industry in a way that has not happened for many years. Communities and workers up and down Scotland are asking, "If jobs at Johnnie Walker—the world's leading whisky brand—are not safe, what jobs in the industry are safe?"

Willie Coffey's suggestion that the Economy, Energy and Tourism Committee conduct an inquiry into the future of the industry is helpful. That could help Parliament and the Government to identify barriers to growth of the industry, and give further consideration to the issues of heritage and provenance. That could help to set the industry on the path towards sustainable volume growth—the growth in value that helped Diageo to pile up more than £2 billion of profit while throwing hundreds of workers on to the streets. The committee could address how we might gain a proper understanding of the place of whisky in the UK domestic market. Despite significant growth in the consumption of spirits in the UK, sales of whisky have declined by some 40 per cent. I understand from Willie Coffey that Johnnie Walker Red Label is not even offered for sale in some supermarkets in the Kilmarnock area. Also, despite its international profile, Johnnie Walker does not feature in the UK's leading brands.

The committee could also consider alcohol duty. Some have said that the Johnnie Walker issue has no link to the debate on alcohol duty, but the future of the industry cannot be examined without consideration of all the issues. A unit of alcohol that is bought in the form of whisky costs the consumer 23p, whereas the cost of strong cider is just 4p. That is not fair at the best of times, but it is unacceptable at a time when hundreds of jobs are going in the whisky industry. Such issues must be addressed where they should be addressed,

which is by those who have the power to address them properly.

Willie Coffey spoke of the dedication and loyalty to Johnnie Walker of the Kilmarnock workers. By contrast, dedication and loyalty of Diageo to the Kilmarnock workers is lacking. In looking at Diageo's corporate responsibility policies, I found nothing on Scotland, but note that Diageo Ireland says:

"Our business is driven by the belief that we have a wide responsibility to the communities and the environments of Ireland."

I say to Diageo: you also have that responsibility to Scotland. Start showing some.

17:32

Gavin Brown (Lothians) (Con): I congratulate Willie Coffey on securing the debate on this important topic for the economy of Scotland as a whole.

The bald figures, including on the 900 job losses, are well known and have been well publicised. However, the concentration of those job losses in relatively small geographical areas will lead to devastation for those localities. It is an obvious statement to say that 900 families will be directly affected, but the companies that directly supply the business will also see a loss of orders that could have big impacts on their incomes and jobs. Equally, their sub-contractors and the supply chain as a whole will be affected. In addition, shops and businesses in the affected areas will, although they do not have direct contractual links to Diageo, lose business if Diageo employees reduce their spending. Those shops and businesses are bound to be affected.

It is worth reflecting and focusing on the hard work that campaigners and the Diageo task force are undertaking. There is the work of the cross-party group of MSPs and MPs, local councils, trade unions and workers. Everyone has worked hard; people are pulling together to try to create some kind of positive future. We had a march that was attended by about 20,000 people and which left no one in any doubt about the strength, breadth and depth of feeling. We also have the sitting down around the table and the rolling up of sleeves to look at the hard facts and do the number crunching to try to come up with some kind of workable proposal.

I wish the cabinet secretary the best of luck in his meeting tomorrow. The success or otherwise of the meeting will depend entirely on whether there is anything genuinely new and innovative in the proposals. Through the newspapers, Diageo management have made it clear that, if a proposal has been considered and rejected, there is not a great deal of hope in putting it forward again. I

totally understand the cabinet secretary's reasons for not outlining the proposals that will be put tomorrow and I hope that he has some genuinely new proposals that will lead to the possibility of progress.

All of this comes against the backdrop of increasing unemployment in Scotland. It could not have come at a worse time. The most recent figures for Scotland show an increase of 31,000—or 20 per cent—in unemployment in the past quarter. It is worth the Government's while to note that although unemployment in Scotland is still lower in percentage terms than in the UK as a whole, the rate of increase in unemployment in Scotland over the past quarter was double the rate of increase south of the border.

Mr Swinney can do his best tomorrow, but ultimately it will not be in his gift to decide the future of Diageo and Johnnie Walker. What is within his gift is what the Government does or does not do in its legislative programme. I highlight to Mr Swinney and Mr Mather the issue of minimum pricing, which could in the future be far more damaging to the whisky industry than just about anything else that has happened so far. It will not only increase the cost of whisky in Scotland but hurt our exports even more, which is more damaging, according to the Scotch Whisky Association. So far, the issue has been viewed purely through the prism of health. I seriously urge Mr Swinney and Mr Mather to view it through the prism of business to ascertain what can be done to prevent minimum pricing from going ahead and damaging our industry in the short, medium and long terms.

17:36

Bob Doris (Glasgow) (SNP): I congratulate Willie Coffey on securing the debate. I have been proud to stand four square behind the workers at Port Dundas and Kilmarnock. The cross-party unity in the campaign to save jobs has been vital—it has been a real strength of the campaign.

I have met the workers and unions at Port Dundas on a number of occasions, and I have organised a round-table meeting with a number of stakeholders—including Glasgow City Council, the unions and Scottish Enterprise—specifically to consider the case for Port Dundas. I thank Partick Thistle for hosting that meeting and I commend Partick Thistle and Kilmarnock Football Club on their support for their local communities. I also commend other politicians who have strained every sinew to save jobs, including Willie Coffey, Des Browne and Patricia Ferguson.

Central to my concerns as a Glasgow MSP is how the workers at Port Dundas have been treated. They recently showed loyalty to Diageo by

accepting a pay deal that showed great restraint. They have continued to consider ways of improving working practices to make them more efficient for the company—they are a committed workforce. The reason for the pay restraint and for the flexibility in relation to working practices was that the workforce was led to believe that that would secure jobs. Workers at Port Dundas have invested by the sweat of their brow in Diageo. All they ask is that the same loyalty and respect be shown to the workforce by the company. As we have heard, the other day Diageo announced operating profits of £2.6 billion—a 4 per cent increase—with £1.2 billion going to its shareholders.

Let us be clear: Port Dundas makes Diageo money and Kilmarnock makes Diageo money. The company is not cash strapped. The issue is whether Diageo maximises its profits at the expense of its loyal and hard-working workforce and their communities and, in doing so, damages its brand image. I am sure that the proposals that will be put to Diageo by the Scottish Government task force will consider ways to make the retention of operations at Port Dundas and Kilmarnock more attractive to Diageo. I very much hope that Diageo will listen and realise that a balance between unfettered profits and meaningful corporate and social responsibility—including investment in communities—must be struck. In the long term, investing in communities will strengthen the brand and increase profitability. It is also the right thing to do.

I support Willie Coffey and Linda Fabiani's calls for an inquiry into the whisky industry. I have spoken to Diageo and it is clearly choosing to buy white spirit from rivals or to produce it at distilleries in which it has part ownership. There appears to be an awful cosiness between companies that are otherwise market rivals. Perhaps that needs to be examined, along with other parts of the industry.

The Scottish Government-led task force has concerns over the extent of the exposure Diageo is leaving itself open to in the marketplace. Patricia Ferguson and David Whitton mentioned the danger of Diageo putting all its eggs in one basket. I agree with that analysis. I believe that the way ahead is to continue with the Port Dundas distillery for the next few years. We need to work with Diageo to reduce overheads and analyse how to help it with its cost base. In two years, the market could look very different.

Diageo markets Johnnie Walker as Scotland in a glass. It views the dram that people take worldwide as a premium Scottish product. It must now pay a premium to Scotland's communities and invest in Kilmarnock and Glasgow. It is with great good will that I wish the cabinet secretary

well tomorrow in what will hopefully be constructive discussions with the company.

17:40

Cathy Jamieson (Carrick, Cumnock and Doon Valley) (Lab): I am delighted that this matter has been selected for a members' business debate this evening. I congratulate Willie Coffey on securing the debate and on his work on the issue. I also congratulate Des Browne, the MP for Kilmarnock and Loudon, on the immense amount of work that he has done, on the debates that he has held at Westminster and on his work elsewhere.

Like others, I thank Kilmarnock Football Club for immediately stepping up to the plate when the closures were announced—although, with due respect to my good friend Patricia Ferguson and to Bob Doris, the pre-season visit of Partick Thistle to Kilmarnock is not one of the evenings that I want to remember.

I offer my thanks to the trade union Unite, of which I am a member, for its tireless campaigning on the issue. It is worth remembering that the campaign has been and must be trade union led—the trade unions are the ones who speak on behalf of the workforce. Whatever we do, we must be prepared to support the trade union in seeing the process through.

The issue has united the town of Kilmarnock, and the sustained campaign is a credit to everyone who has been involved. It is a vital issue not just for Kilmarnock but for Ayrshire and the whole of Scotland. As we have heard, the Johnnie Walker brand is synonymous with the town of Kilmarnock. The plant dominates the skyline. I remember coming back in the car from the far-flung parts of what is now John Scott's constituency when I was a child. When we came over the hill and I saw the Johnnie Walker sign lighting up the sky, I knew that I was almost home.

The plant has been central to the history of the town, and Johnnie Walker must be vital to its economic future. Its reach in terms of employment and economic impact goes much wider than Kilmarnock. Many of my constituents in Carrick, Cumnock and Doon Valley are employed in the plant, and many local businesses provide services for it. Almost everyone in Ayrshire will know someone who has worked at Johnnie Walker at some stage. It is estimated that it has an economic impact of more than £20 million in our local economy. The closure of the bottling plant would not only devastate Kilmarnock; it would affect lives and businesses across Ayrshire.

I have seen many changes in my constituency over the past 20 or so years. I have seen whole industries killed off—manufacturing and textiles,

which followed on from the pit closures—and I have seen small businesses struggling to survive. After this debate, I am going to the first meeting of a newly set-up cross-party group on industrial communities, where we want to consider what more can be done to repair some of the devastation that those communities have experienced in the past.

The success of the Johnnie Walker brand has been achieved by the hard work and commitment of the workforce. We have heard that time and again tonight, so it would be absolutely disgraceful for the company to cast aside the workforce in Kilmarnock and Port Dundas in a blatant attempt to squeeze ever more profit. It seems incredible and absolutely unjustifiable that, although Diageo's profits stand at nearly £2.5 billion, the company is seeking to cut the links between the Johnnie Walker brand and a community that has served it loyally for nearly 200 years.

Let us put it in perspective: Diageo is not a company on its uppers, struggling to survive. The move represents greed on a breathtaking scale. That is why thousands of people, me included, walked through the streets of Kilmarnock in protest. That is why hundreds of thousands of people have already signed the petition in protest against the move. That is why many of us signed the pledge today to support Unite and the workforce in their campaign.

Johnnie Walker, the striding man, has always been associated with Kilmarnock. It has become a symbol of the town. The cabinet secretary told us in a statement earlier today that he is meeting representatives of Diageo tomorrow. I hope that he will convey the very clear message that the reputation of Diageo will be forever tarnished if it goes ahead with the closures.

Willie Coffey started the debate with some words from my good friend Rab Wilson, the unofficial poet laureate of Ayrshire, and I will finish with some words from Rab.

"Here's Labour, an the SNP,
Wha staunin here the day agree,
Tae sing frae this same sheet yer plea,
Fir aa yer workers,
Let sense and justice bear the gree—
Save Johnnie Walkers!"

The Deputy Presiding Officer: Before I call Hugh O'Donnell, I am minded to accept a motion without notice to extend the debate.

Motion moved,

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

Motion agreed to.

17:45

Hugh O'Donnell (Central Scotland) (LD): Earlier today we heard a statement from the Cabinet Secretary for Finance and Sustainable Growth on his on-going battle with Diageo. I think that that battle is welcomed by everyone in the public gallery. Willie Coffey and Des Browne deserve our heartfelt congratulations on how quickly and how well they have pulled the process together.

I do not understand why Diageo has treated a loyal, reliable, productive and profitable workforce in the way that it has done. It makes no sense. It also makes no sense that one of the biggest contributors to the Scottish economy gave no Government of any shade a heads-up on what it was planning. I support the people who have recently called for an inquiry at which we can begin to get to the root of those decisions.

Like Linda Fabiani, I am a member for the region in which Kilmarnock lies. Central and west central Scotland always seem to bear the brunt of a dismissive corporate attitude to people, families and communities. Do companies think that people in those areas do not deserve any better? That seems to be so in the case of Diageo. As Gavin Brown said, it is not just about the 900 jobs in the company, serious as that is; it is about the corner-shop grocers, the petrol stations and so on.

I take issue with the estimate by EKOS, to which the cabinet secretary referred, that the plant's closure will take £15 million out of the local economy annually; I think that the figure will be much bigger. Diageo should hang its head in shame. It has promised to invest £100 million, but over what period? In 10 years, its actions will take £150 million out of the local economy, so there will still be a £50 million deficit. That is not acceptable.

I look forward to success for the cabinet secretary and others in their negotiations with Diageo, but I regret that, like Gavin Brown, I suspect that it will be hard to make the company change its mind. We should remind our communities that such companies are not to be trusted when it comes to the interests of the communities in which they operate and that we should all be wary of promises that were made about the globalisation of the business world.

17:49

Ted Brocklebank (Mid Scotland and Fife) (Con): I congratulate Willie Coffey on securing the debate and fighting for his constituents, as I would expect a good local member of the Scottish Parliament to do. My colleague John Scott has had to leave the chamber, but I am sure that he will fight equally hard for his constituents in Ayrshire.

I would have preferred that no Diageo jobs be lost anywhere in Scotland, but I am sad to say that that is not the situation that we face. It seems certain that, whether Diageo sticks with its original plan or accedes to the draft proposals that the cabinet secretary's task force has put forward, 500 Diageo jobs will be lost in Scotland.

It is my responsibility as a member for Mid Scotland and Fife to try to ensure that no action to save the Kilmarnock and Glasgow jobs puts Diageo's long-term future in Fife at risk. Despite what the cabinet secretary said this afternoon, that is a possibility. Mr David Gosnell, Diageo's director for global marketing, made it clear in a television interview last week that future investment in Scotland as a whole could be at risk if there was undue Government intervention in the company's business. He warned that the distilling of non-whisky clear spirits such as vodka and gin could be particularly vulnerable. Those are, of course, principal products distilled at Cameron Bridge.

Scotland is set to lose bottling jobs because Diageo has decided that, in the present economic climate, its operations can be run more efficiently. The basic question seems to be whether it is better for £70 million of public money—that is an estimate—to be spent on retaining 500 bottling jobs at Kilmarnock or for us to support the creation of 400 extra jobs in Fife at no cost to the taxpayer.

I am well aware of the devastation that the removal of 900 jobs from Kilmarnock and Port Dundas will wreak on those communities. As we have heard, their local economies are fragile at best. Methil and Leven, too, have fragile local economies. They have had to survive their former dependence on the coal industry and, in more recent times, the loss of the oil platform yard at Methil. Over the years, Fifers have built an admirable reputation for the production of Britain's top-selling vodka—Smirnoff—as well as Gordon's gin, Tanqueray and top-selling whisky brands. They have already attracted an extra £86 million investment from the parent company.

In my experience, the truth is that Government attempts to direct businesses to areas with unemployment problems have met with relatively little success over the years. I am sure that Jim Mather, who is approximately in my age bracket, will be able to attest to that in relation to motor car building at Bathgate, the aluminium smelter at Invergordon and the pulp mill at Corpach. I could go on and on.

I will address the loss of heritage brands and the Kilmarnock connection, to which Willie Coffey referred. As he will be aware, the grain whisky basis of all Johnnie Walker blends is Old Cameron Brig, which is produced at the distillery of that name in Fife just up the road from Leven. Various malts are added to the mix—one from Skye and

others from Speyside—and blended into the various Johnnie Walker brands at plants throughout Scotland, including at Cameron Bridge and, as we have heard, here in Edinburgh.

Despite the historic Johnnie Walker roots in Kilmarnock, the Ayrshire town now contributes a bottling and packaging plant to the brand—and, doubtless, 700 excellent and loyal workers. However, it takes little imagination to see why Diageo wants to consolidate its bottling close to the site where the basic grain spirit necessary for all Johnnie Walker blends is distilled. That is Cameron Bridge and, of course, there are excellent bottling facilities just down the road at Leven.

I hope that, even at this late stage, the cabinet secretary will be able to come to an agreement with Diageo that provides something for everybody, with guarantees of employment in the west and in Fife. However, as Gavin Brown and others have said, experience suggests that that is not likely to be possible. Nonetheless, I wish John Swinney all good luck in his efforts while making it absolutely clear that, as a Mid Scotland and Fife MSP, I will continue to campaign for the £100 million investment and 400 additional jobs at Leven.

17:53

Tricia Marwick (Central Fife) (SNP): I congratulate my good friend Willie Coffey on securing the debate tonight and on the commitment and leadership that he has shown to his constituents in his determination to secure the Johnnie Walker jobs in Kilmarnock.

As I said earlier to the cabinet secretary, the task force of local politicians, local authorities, Scottish Enterprise and the trade unions has worked extremely hard in a short period of time to maximise the campaign to persuade Diageo to stay in Kilmarnock and Glasgow. However, as the constituency MSP for the Diageo plants in Leven and Cameron Bridge, I have a duty no less than Willie Coffey's to ensure that those plants have a long-term and sustainable future and I know that he understands that.

No one wants to see any jobs lost anywhere in Scotland, but my first priority is my constituency. I was grateful for the cabinet secretary's assurances this afternoon about the future of the Leven and Cameron Bridge facilities. However, there is real concern about the long-term future in Leven if all the promised investment is to be switched from Leven to Kilmarnock, as the task force is reported to propose. Diageo in Leven employs 500 people and is the largest employer in the area. Cameron Bridge has been producing whisky on the same site for almost 200 years. It is

not some fly-by-night operation that has just come in from nowhere—it has been there for 200 years. Cameron Bridge is close to Windygates and at one point it employed practically the whole of Windygates. My friend Councillor David Alexander from Windygates is the first person in his family for almost 150 years who has not worked at Cameron Bridge. We therefore have a whisky heritage, too, and it is important that that is recognised.

Diageo in Leven and Cameron Bridge also has a loyal workforce. Leven houses 17 production lines, five of which are dedicated to whisky. As Ted Brocklebank said, the base product of Johnnie Walker whisky is Old Cameron Brig, which is almost impossible to buy anywhere round about the constituency. The remainder of the lines in Leven—this is very important—are dedicated to bottling white spirit, including Gordon's gin, Smirnoff vodka, Captain Morgan rum and Tanqueray, and another 135 Diageo product lines. I understand the desire to keep jobs in Kilmarnock, which is the home of Johnnie Walker, the leading brand of Scottish whisky. However, it is essential that Diageo continues to invest in the Leven plant.

I support the desire to bottle all whisky in Scotland, but I also support the workers in Leven. Some of the arguments that are being used in the campaign leave Leven in a very vulnerable position, given the range of other national drinks that are bottled there. Leven won those products against internal competition from other Diageo companies around the world; it won because the productivity is high there and, more important, investment has been put into the plant. In addition, the workforce is first class. Diageo must continue to put in investment to secure and improve the existing lines, or we run the risk in the long term that the lines and jobs in Leven could be lost not just to somewhere else in Scotland but overseas.

I appreciate the cabinet secretary's comments today, but I urge him to be careful with the task force proposals in case Leven is disadvantaged by them. Like Kilmarnock, Levenmouth is an area of high unemployment. We know what it is like to lose jobs and what it was like when the mines shut down and the shipyard shut down. We have one of the highest unemployment rates in Scotland. We have three generations of people who have never worked. We need to ensure a long-term, sustainable future for Diageo in Leven and Cameron Bridge. My constituency of Central Fife has the third-lowest average wage of any constituency in Scotland. It is imperative that we keep and sustain jobs. The long-term sustainability of Leven is imperative, and I am happy to work with the cabinet secretary or anybody else to assure it.

17:58

Ross Finnie (West of Scotland) (LD): I, too, congratulate Willie Coffey on securing tonight's debate and, more important, on the drive and energy that he has given to tackling his constituents' problems. I congratulate the Westminster MP Des Browne on that, too. The fact that they have engendered cross-party support for the campaign is extremely important.

I agree with all the detailed comment that was made early in the debate, but I want to address one issue in particular. There is a word that I think Patricia Marwick managed to use three times and Linda Fabiani once and which is an extremely important element in this debate—that word is “sustainable”. Sustainable economic development is something to which, quite properly, the cabinet secretary and his Government are dedicated.

We may require a debate on or an inquiry into the whisky industry, but the one thing that we do not need an inquiry into is why all this came about, because we know that the decisions that have been taken in Kilmarnock and Glasgow are the product of unsustainable economic thinking. They are the product of thinking that we should progress on the basis that people and plant do not matter—that they are merely commodities that can be used or abused when it suits people and dropped like a stone when they are not needed. The thinking is that companies should move on, tear up another part of the country to build a spanking brand new factory, and employ more people who will then be dropped when it suits them. We do not need an inquiry to find out about unsustainable economic development. The product of such development is humankind consuming at a rate that would require three planets to sustain. All members know perfectly well that we have only one planet.

That fundamentally flawed thinking is at the heart of the stupidity of any major organisation that believes that it can simply dump people, dump Kilmarnock and dump Glasgow and say, “We are making a profit. By the way, the cost of this unsustainable exercise is nothing to do with us; it's for Government to pick up the tab and for Governments to pay the costs across the globe.” It is fundamentally flawed to say, “Ah, yes. We, Diageo, will make profits, and we do not expect any silly Government to interfere with what we are doing, but we expect the Government to pick up the tab for the costs that we cause to the environment or humanity as a result of the number of people we simply dump when it suits us.”

The Government is seeking to do excellent work to persuade Diageo of the falseness of its case. However, given that the cabinet secretary's remit specifically covers sustainable economic development and that what we are discussing is an example that all members should be united on,

he should make it absolutely clear that the approach that has been taken represents exactly the kind of unsustainable economic development that we are seeking to reverse. A fundamental issue is involved that the cabinet secretary's Government espouses, and I hope that he will make more of it in the days and weeks to come in making his arguments. It is at the heart of the matter.

International companies must be persuaded of their obligations. Of course they employ companies such as BDO. I do not for a minute suggest that that firm is not a perfectly reputable firm to prepare a report, but it will not take into account the opportunity cost of destroying Kilmarnock or of making 900 people unemployed. It simply goes by the old rules, which are proving to be unsustainable.

Therefore, my plea to the cabinet secretary is that, in addition to all the excellent points that have been adduced in this very good debate about the fundamental flaws in the Diageo case, he should bring to the forefront the sustainable economic development part of his portfolio and volubly make the case for sustainable economic development to the business community. When I was on holiday, I read with despair that business leaders are saying that the Government should not be involved and that they cannot have it tampering with the way they do things. They say, “It's excellent that we use three planets. We'll be able to go on like that because we're business and we know best.” Businesses know how to run business, but they ought to be properly accountable. If they are going to tell us what profits they make, they should also tell us the costs of acting in the way that they do and propose to do in places such as Kilmarnock and Glasgow.

18:04

Claire Baker (Mid Scotland and Fife) (Lab): I congratulate Willie Coffey on securing this debate, which is on an issue that is important to his constituents and to Scotland, and I recognise his commitment to the Diageo workforce. I also recognise Patricia Ferguson's efforts in fighting for the Diageo workforce at Port Dundas, and that there has been cross-party support for the motions lodged by her and Willie Coffey. MPs, MSPs, councillors, unions and the workforce have shown what can be achieved by people working and campaigning together. I commend their efforts to save jobs and communities.

Today, I was pleased to meet Unite members and show my support for their efforts and their campaign to keep jobs in Scotland. The situation that families in Kilmarnock will face if the plant closes and jobs go will be devastating. We all accept that it is an area of Scotland that will find it

difficult to absorb unemployment, and we know how difficult it can be for an area to recover from the loss of such a significant employer.

The workforce and the unions must be satisfied that every option to secure the plant has been explored and that Diageo is listening and giving serious consideration to alternative proposals. It is disappointing that the cabinet secretary has not provided us with more details on the task force's proposals, but I look forward to details of the options being presented.

We are all bitterly disappointed by Diageo's announcement to cut jobs in Scotland. As a Fife MSP, I know that the company has been a good employer in the area and that it has strong relationships with its workforce, the trade unions and the community. I think that we all recognise that Diageo has been a valued company in Scotland. Now we are looking for it to show that it values the workforce in Scotland. We know that, in difficult economic circumstances, Diageo announced healthy profits just last week. It must seriously consider its commitment to Scotland and the extent to which its success and profitability are due to what it has gained from Scotland.

I believe that we cannot have a debate in Parliament about Diageo in Kilmarnock without having a debate about Diageo in Leven, and I am concerned that that is where the Government has been short-sighted. Members will know that it is not often that I find myself in agreement with Tricia Marwick, but as the constituency member for Glenrothes, she is right to stand up for Diageo in Leven. As a Fife MSP, I will support her in her questioning of the Government's approach to the Leven plant.

I am afraid that in its intervention on Diageo, the Government does not appear to appreciate fully what the investment that is proposed for Leven will achieve. During this afternoon's statement, we found out that there had been no engagement or discussion with Fife officials on the issue. The investment in Leven is not just about jobs; it is about securing the long-term future of the plant. I was disappointed that when it was pressed during the statement, the Government could not give assurances that any proposals concerning Kilmarnock that it makes to Diageo will fully take into account the impact that they might have on Fife in future. The Government must be careful that it is not seen to be prepared to sacrifice investment in Fife for investment in Kilmarnock without giving any consideration to the impact that that will have on the Leven area and, importantly, on the long-term future of the Diageo plant in Fife.

I need to be convinced that any plans that are produced in the interests of Scotland take full account of the impact on Fife. Reflection on the cabinet secretary's statement indicates that that

does not seem to be the case. As the trade unions have made clear and as Diageo's profits show, Diageo is a profitable company, so we should all try to maximise its investment in and commitment to Scotland. While members in the west rightly fight for their communities, members in Fife will show their commitment to the Leven plant. I know that the constituency MP and MSP have visited the site in recent days and I, too, will visit it in the next few days, because it is important that local members show their support for a workforce whose members are at risk of feeling unsupported by Government.

18:08

The Cabinet Secretary for Finance and Sustainable Growth (John Swinney): I congratulate Willie Coffey on securing the debate and on displaying in his speech and in his interventions over the past two months, which have been extremely difficult for his constituents, the passionate and personal local leadership that all of us who have had the privilege to know him for many years knew that he would be able to provide for the community that he represents. He has forcefully made the case on behalf of his constituents, as we always expected that he would.

In her quoting of Rab Wilson, Cathy Jamieson gave us a unique sense of the atmosphere that has been created around the issue. As well as paying tribute to Willie Coffey, I pay warm tribute to Des Browne, the member of Parliament for Kilmarnock and Loudoun, who entered the House of Commons at the same time as I did. With the assistance of modern technology, I had the pleasure of watching the adjournment debate that he led on the issue in the House of Commons, which brought together many members of Parliament of all shades of opinion. It was a debate of the same character as the debate that we are having tonight, in which the importance of protecting employment in the Kilmarnock and Port Dundas areas was emphasised.

There has been understandable concentration in this debate on the impact on Kilmarnock and Glasgow of Diageo's proposals, and some have asked why the Government has become as heavily involved in this case as it has. I make no apology for the scale of the Government's involvement and intervention in this issue, for many of the reasons that Mr Finnie eloquently explained in his speech.

Mr Finnie—in contrast to Mr Brocklebank—captured the fact that Diageo's proposals represent a real cost to Scotland. Mr Brocklebank said that there will be investment in Fife at no cost to the taxpayer, but I am afraid that that does not consider both sides of the balance sheet, as the

UK Government and the Scottish Government will be faced with enormous financial pressures in the Kilmarnock area if the proposals are not in any way changed. East Ayrshire Council, which contains Kilmarnock, has the highest claimant count of any local authority with which we would normally compare it, and Glasgow City Council has the highest claimant count of any local authority in the country. That explains why the Government feels the need to bring together all the interests and parties to try to ensure that a different course is taken. That is important to ensuring that we do not end up with the desolation that will occur in Kilmarnock if the jobs are lost. We are talking about the loss not only of the largest private sector employer but of the largest private sector employer by a country mile, and Government must be attentive to that.

Linda Fabiani and Bob Doris mentioned questions of corporate social responsibility. What troubles me about the approach that Diageo has taken in this case is that it runs contrary to many of the practices and approaches that it has championed and demonstrated on a number of occasions around the country. I want Diageo to understand that it is a valued company in Scotland—of course it is; it is a big employer—and that the Government wants to work with it. However, we also have a wider responsibility to ensure that our communities are protected from the type of economic impact that will be felt by Kilmarnock if the proposals are not changed.

Diageo has presided over the Johnnie Walker brand in recent years. The brand is a valuable commodity and I appeal to Diageo, in advance of the discussions that we will have tomorrow, to recognise the significance of the investment that it has made in acquiring and developing the Johnnie Walker brand and the real danger that it will lose that value if it does not take a different course. I cannot believe that anyone who is advising Diageo can tell it that the events of the past two months have been good for the Johnnie Walker brand or the reputation of Diageo—a company, I stress, that has demonstrated and articulates the values that we think are important in building partnerships between employees and management. That point is illustrated by the willingness of the workforce to undertake greater efficiency in working practices to improve the financial performance of the plants, which Patricia Ferguson and Bob Doris mentioned. The workers themselves have been among the most surprised by the scale of the changes that Diageo proposes to make, because they are in regular contact with the company and did not expect such a sharp change in direction to occur.

Part of that sharp turn in direction is embodied by the judgments that Diageo has made about the marketplace and the market for distilled grain

product. In that regard, I think that the company is taking a risk that, by any assessment, is too great to bear in the short term. In that regard, Patricia Ferguson and David Whitton marshalled good arguments for why the company should reconsider.

I appreciate that this debate is difficult for members, and I assure them—including my colleagues from Fife—that it has not been easy for ministers, either, to take a decision or an approach. I hope that colleagues who represent Fife understand the necessity of Government action to protect wider interests in Scotland from the economic and social damage that could be created.

I said in my statement earlier today that I and those who have considered the issues that are implicit in the debate recognise the strength and importance of Diageo's investment in Fife, in Leven and Cameron Bridge. That should give a great deal of confidence to those who are concerned about the prospects in those areas.

I assure Claire Baker that, as I have said—I do not know which part of my earlier statement she did not listen to—I have kept Fife Council involved in the proceedings. Her speech tonight was a terribly confused example of exhorting the Government to take action on the one hand, while disapproving of the action that the Government takes on the other. The Government is acting on the matter because we can see that one part of Scotland will be severely affected if we do not try to secure a different course of action.

I appreciate the good will that members from all parties have expressed during the past couple of months, and in particular I appreciate the work that has gone into the task force. I assure members that the proposals that will be set out to Diageo will use the Government's and the task force's approach to engage in dialogue about how we can make progress on the issue and minimise negative economic impact.

However, that will depend crucially and utterly on—as Gavin Brown said—the willingness of Diageo to consider alternatives and to compromise with a wide range of interests. The unity of opinion that has been expressed in the Parliament tonight is that we need to take a different course to protect vital communities in our country and ensure that a company with a strong reputation is able to live up to that reputation and properly promote a brand in which it has invested so heavily and on which its credibility so much depends.

Meeting closed at 18:17.

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

Members who wish to suggest corrections for the archive edition should mark them clearly in the report or send it to the Official Report, Scottish Parliament, Edinburgh EH99 1SP.

The deadline for corrections to this edition is:

Wednesday 9 September 2009

PRICES AND SUBSCRIPTION RATES

OFFICIAL REPORT daily editions

Single copies: £5.00

Meetings of the Parliament annual subscriptions: £350.00

WRITTEN ANSWERS TO PARLIAMENTARY QUESTIONS weekly compilation

Single copies: £3.75

Annual subscriptions: £150.00

Published in Edinburgh by RR Donnelley and available from:

Blackwell's Bookshop

**53 South Bridge
Edinburgh EH1 1YS
0131 622 8222**

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

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

And through other good booksellers

Blackwell's Scottish Parliament Documentation

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

Telephone orders and inquiries
0131 622 8283 or
0131 622 8258

Fax orders
0131 557 8149

E-mail orders, Subscriptions and standing orders
business.edinburgh@blackwell.co.uk

Scottish Parliament

All documents are available on the Scottish Parliament website at:

www.scottish.parliament.co.uk

For more information on the Parliament, or if you have an inquiry about information in languages other than English or in alternative formats (for example, Braille; large print or audio), please contact:

Public Information Service
The Scottish Parliament
Edinburgh EH99 1SP

Telephone: 0131 348 5000
Fòn: 0131 348 5395 (Gàidhlig)
Textphone users may contact us on
0800 092 7100
We also welcome calls using the RNID
Typetalk service.
Fax: 0131 348 5601
E-mail: sp.info@scottish.parliament.uk

We welcome written correspondence in any language.