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Pàrlamaid na h-Alba

Official Report

MEETING OF THE PARLIAMENT

Thursday 25 October 2012

Session 4

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Scottish Parliament

Thursday 25 October 2012

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

General Question Time

Proceeds of Crime Act 2002 (Glasgow Provan)

1. Paul Martin (Glasgow Provan) (Lab): To ask the Scottish Government what value of assets has been recovered from criminals as a result of crimes in Glasgow Provan under the Proceeds of Crime Act 2002 in each of the last five years. (S4O-01386)

The Cabinet Secretary for Justice (Kenny MacAskill): Our priority is disrupting and dismantling criminal enterprises, and I welcome the excellent work undertaken by the police and prosecutors to recover the ill-gotten gains from organised criminals across Scotland. More than £60 million has been recovered through that effective legislation since 2003. These matters are dealt with by the police and the Crown Office—they do not hold proceeds of crime data at the level of detail that has been requested. To collate that level of detail would be complex and labour intensive due to the number of cases involved and the technical difficulties associated with linking individual cases to specific geographical locations.

Paul Martin: I pose the following question to the minister. Should the communities that are most affected by drugs crime receive a significant share of the proceeds, which are very effectively collected by the courts?

Kenny MacAskill: They do receive a significant share, but Mr Martin forgets that crime knows no geographical boundaries, which is why I addressed the Association of Chief Police Officers of England and Wales. Many of the problems that are faced by communities that are blighted by drugs are similar whether in the West Midlands or in Merseyside. I pose a counter-question: if a drug delivery from Liverpool that was bound for Glasgow Provan is disrupted elsewhere by the Scottish Crime and Drug Enforcement Agency, who claims the proceeds of the crime? Is it the responsibility of Liverpool, is it the responsibility of Provan or does the responsibility lie elsewhere?

Equally, the principle is that we pour money back into the areas that suffer most. We will not go in the direction of many Labour members, which is to have a postcode lottery. Far too many areas in Scotland are blighted and each and every area is entitled to some support.

Sea Lice

2. Jean Urquhart (Highlands and Islands) (Ind): To ask the Scottish Government what action it is taking on breaches of fish farm regulations in relation to the overuse of chemical treatments for sea lice infestations. (S4O-01387)

The Minister for Environment and Climate Change (Paul Wheelhouse): The use and release of sea lice medicines from fish cages is regulated by the Scottish Environment Protection Agency. Where evidence of significant breaches of licence conditions are uncovered, these are handled in accordance with SEPA's published Enforcement Policy. The number of incidents where such licence breaches have occurred is small, and they have normally been dealt with by reports being made to the procurator fiscal.

Jean Urquhart: Would the Scottish Government consider a moratorium on new fish farms until the current farmers resolve sea-lice issues?

Paul Wheelhouse: I welcome Jean Urquhart's question, but the Scottish Government is committed to the sustainable economic growth of the agriculture industry while giving due regard to the wider marine environment, which I understand is the basis of the member's question.

The Scottish Government introduced the Aquaculture and Fisheries (Scotland) Bill on 3 October 2012 and the bill, together with the accompanying documents, was published on 4 October 2012. The bill will strengthen the regulatory framework so that it continues to support delivery of sustainable growth. I believe that that is the correct approach for the Government to take at this time. If Jean Urquhart wishes to write to me, I will give her more details.

Claire Baker (Mid Scotland and Fife) (Lab): If the aim of increasing production of all farmed fish by 50 per cent by 2020 is achieved, it will lead to a subsequent increase in use of chemical treatments. What will the minister do to ensure that those increases are taken into account when the Government looks at reforming the regulatory system?

Paul Wheelhouse: It is true to say that as the sector grows the amount of fish and the biomass within particular sea lochs will increase, and that the need to introduce medicines to control a larger population of fish will also increase. I accept that, but it is important to note that the increase in the amount of medicines that are being deployed might not translate automatically into an increase in toxicity. People are trying to reduce the toxicity of medicines that are currently used, so the volume of medicines used may increase because they have a lower impact on the environment. I am happy to correspond with Ms Baker on that point.

Scottish Environment Protection Agency (Enforcement Actions)

3. Christina McKelvie (Hamilton, Larkhall and Stonehouse) (SNP): To ask the Scottish Government what powers the Scottish Environment Protection Agency has to ensure full compliance with laws on emissions by waste incineration plants and what enforcement actions are available to it. (S4O-01388)

The Minister for Environment and Climate Change (Paul Wheelhouse): Wherever possible, the Scottish Environment Protection Agency seeks to work with regulated businesses to help them to comply with regulations. When businesses wilfully or negligently harm the environment, SEPA has a range of enforcement powers that it uses to ensure that the environment is protected. Those powers include suspending or revoking a business's permit to operate, and recommending prosecution to the procurator fiscal.

Christina McKelvie: I impress on the minister one of the issues that has arisen in the process of granting a Pollution Prevention and Control (Scotland) Regulations 2000 licence for the proposed Dovesdale plant near Stonehouse. Objectors have had difficulty in adding their objections when further questions have been asked and answered by the company, which in this case is Scotgen (South Lanarkshire) Ltd.

Given that the Scotgen (Dumfries) Ltd plant at Dargavel has not produced one iota of energy and has committed hundreds of breaches of environmental legislation, and that it plans to use the same technology at Dovesdale as it is using at Dargavel, can the minister reassure my constituents that he will do everything that he can do to ensure that SEPA has all the powers that it requires to fulfil the statutory requirements in protecting our environment?

Paul Wheelhouse: SEPA already has a wide range of powers to ensure that the environment and human health are protected. Those begin with the permanent application process and continue through commissioning and plant operation. Nevertheless, our joint programme with SEPA on better environmental regulation seeks to ensure that SEPA has the right range of flexible enforcement options available to it.

On the Dovesdale proposal, now that the application has been withdrawn, any further application would have to start from square 1. SEPA has informed the applicant that any new application must contain the necessary information that was missing from the original application. If a further application is made, there will be ample opportunity for the public to participate.

I understand that SEPA has offered to meet the Dovesdale action campaign to discuss the issues

that it has with the consultation process, and I will ask to be kept informed of those discussions.

NHS Tayside (Patient Transport)

4. Murdo Fraser (Mid Scotland and Fife) (Con): To ask the Scottish Government what recent discussions it has had with NHS Tayside regarding patient transport between Perth and Dundee. (S4O-01389)

The Cabinet Secretary for Health and Wellbeing (Alex Neil): Scottish Government ministers and officials meet all health boards on a regular basis to discuss a wide range of issues. However, arrangements for local patient transport provision are a matter for NHS Tayside to discuss with the appropriate local authorities and transport providers.

Murdo Fraser: As the cabinet secretary may be aware, NHS Tayside took the decision in the summer to reduce the vital 333 bus service between Perth royal infirmary and Ninewells hospital in Dundee. The link is used by patients, relatives and staff—in particular by staff who work evenings, who have been put to real inconvenience by the service reduction. Will the cabinet secretary, when he next meets NHS Tayside, impress on it the need for a full reinstatement of that vital link?

Alex Neil: There are two points to make. First, my understanding is that some improvements have already been made in the 333 service and in other services that are relevant to that particular connectivity. However, I am happy to take the opportunity to try to ensure that transport arrangements between Perth royal infirmary and Ninewells are up to the required standard and frequency.

Secondly, I draw Murdo Fraser's attention to a national short-life working group that has been examining NHS transport issues throughout the country, and which is due to report fairly soon.

Dr Richard Simpson (Mid Scotland and Fife) (Lab): I thank the cabinet secretary for that additional information. I agree that NHS Tayside has made some movement, but more is needed. It is clear that there are problems where services are being moved from one hospital to another in order to improve their quality. That has happened in Tayside and in other areas.

Will the cabinet secretary ensure that the short-life working group looks specifically at where services have been centralised with the result that staff and relatives have to travel? The new service must provide for that as well.

Alex Neil: All those issues are covered by the remit of the short-life working group. I am keen to ensure that we provide adequate transport

arrangements for patients, visitors and staff, because those are essential to the efficient working of the national health service in Scotland.

Ferry Services (Islay)

5. Jamie McGrigor (Highlands and Islands) (Con): To ask the Scottish Government how it assesses whether the provision of ferry services is adequate for the residents of Islay. (S4O-01390)

The Minister for Transport and Veterans (Keith Brown): A needs-based assessment was used to determine the routes and ferry services required for Islay. We published our proposals in the draft ferries plan for consultation in December 2011. A final ferries plan setting out the way forward will be published before the end of this year.

Jamie McGrigor: Will the minister urge CalMac to respond to the wishes of local residents and businesses on Islay and Jura for their ferry services? Above all, will he ensure that the extra sailing to and from Islay that has been introduced for the winter timetable will be kept for the summer months?

Keith Brown: I would have hoped that Jamie McGrigor would welcome that extra sailing and I would have hoped that he would have welcomed the extra sailing during the summer timetable, from Kennacraig to Port Ellen and from Port Askaig to Kennacraig. Obviously, CalMac introduced the extra sailing in response to local concerns and it has been very much welcomed. Whether we can continue with it will be partially dependent on the outcome of the final ferries plan—the draft ferries plan has been issued for consultation. I have had substantial responses from local people and many pieces of correspondence from the local member on the issue, but I have had no response from Jamie McGrigor or the Tory party on the draft ferries plan. I will, however, look at the issue and CalMac will look at it, as it always does, to try to respond to local needs.

Healthy Eating

6. Bob Doris (Glasgow) (SNP): To ask the Scottish Government what it is doing to promote healthy eating. (S4O-01391)

The Minister for Public Health (Michael Matheson): We have introduced a range of measures to improve diet and are spending over £7.5 million to March 2015 on projects to encourage healthy eating, from community initiatives in deprived areas, to the healthy living award in catering settings. We are also working closely with the food industry—including manufacturers, retailers and caterers—to reduce the salt, fat and added sugar content of products,

and we are working with the education sector to teach people about the importance of healthy eating. Further, in a significant step forward, as I announced yesterday, we are recommending traffic-light colours on all pre-packaged foods sold in Scotland, which will make it easier for consumers to make healthier food choices.

Bob Doris: I was delighted to read that our new Cabinet Secretary for Health and Wellbeing recently reaffirmed his belief that free school meals have substantial health benefits, and I welcome the fact that the increased entitlement to free school meals that was given by the Scottish Government in 2009 has led to 44,000 children benefiting. However, will the minister ensure that there are cross-departmental discussions in the Government on how provision of free school meals can be expanded in future years, given the clear public health benefits? I know that we are in difficult financial times, but planning for the future is essential.

Michael Matheson: We have since 2007 taken forward a range of measures to extend provision of free school meals to children and young people, which includes providing free school meals to children from families who are in receipt of working tax credits and child tax credits so that they can receive a healthy meal at school. Those actions have seen the number of children and young people who are registered to receive free school meals rising from 16 per cent when we inherited the scheme in 2007 to almost 20 per cent of pupils in 2012, which totals 130,000.

The Government recognises the benefits that can be gained by extending provision of free school meals, but in the present financial climate there are difficulties in extending provision further. However, we will continue to look at what steps we can take to increase provision of healthy free school meals.

Elaine Smith (Coatbridge and Chryston) (Lab): On healthy eating among infants, what more can the Government do in relation to supporting and promoting breastfeeding to improve health and help to save the national health service millions of pounds, as was cited in a recent UNICEF report?

Michael Matheson: Breastfeeding has a very important part to play in helping to promote healthy eating among young children. We have set a range of targets for NHS boards to promote breastfeeding within their areas and to focus particularly on those in more deprived communities. We wish to see boards making progress in this area, and it is an issue that we continue to pursue with them.

Scottish Rail Franchise

7. John Finnie (Highlands and Islands) (Ind):

To ask the Scottish Government what implications have arisen for the Scottish rail franchise as a result of the recent United Kingdom Government decision on the west coast main line. (S4O-01392)

The Minister for Transport and Veterans (Keith Brown): When the Department for Transport publishes its report on the review of the west coast franchise debacle at the turn of the year, we shall assess whether there are lessons to be learned for future procurement of rail passenger services in Scotland.

John Finnie: Will the minister advise me what discussions the Scottish Government has had with the UK Government on the transfer of powers over rail, which could allow public sector models to form part of any review of the rail franchise in Scotland? Does he agree that publicly run railways would offer the public a better deal than the current fragmented and inefficient model?

Keith Brown: Under the current devolution settlement, it is possible for public sector and not-for-profit bids to be submitted in relation to future provision of rail services in Scotland.

We have had a number of discussions with the UK Government about relaxing the franchise arrangements. Indeed, I spoke to the Secretary of State for Transport yesterday about the implications of the decision on the west coast main line. However, as I made clear during the debate on rail that we had recently, it is for individual bidders to come forward with their proposals.

The Brown review, which the UK Government has set up, will potentially have implications for the ScotRail franchise if it chooses to make recommendations that would change the basis of future franchise arrangements. To that extent, there may be as yet unknown implications for the ScotRail franchise.

I make it clear that we have no plans, during the next franchise, to introduce a fares structure whereby someone can buy a standard-class ticket and sit in a first-class carriage. *[Laughter.]*

European Arrest Warrant

8. Colin Keir (Edinburgh Western) (SNP): To ask the Scottish Government how many criminals have been brought back to Scotland through a European arrest warrant. (S4O-01393)

The Cabinet Secretary for Justice (Kenny MacAskill): Separate statistics for those returned under European arrest warrants and those returned under other arrangements have not been kept in all years. However, since the beginning of 2004, between 60 and 70 persons have been

returned to Scotland under a European arrest warrant.

Colin Keir: Does the cabinet secretary agree that the Home Secretary's position on the European arrest warrant is at best confused? Will he comment on what impact a short term or permanent opt-out would have on Scotland?

Kenny MacAskill: It is clear from the available figures that the European arrest warrant has increased the number of persons being returned to Scotland to face justice. The Home Office might believe that the framework that governs extraditions from Europe could revert to the Council of Europe convention on extradition of 1957. Irrespective of whether that is possible, however, those arrangements would not be as satisfactory. The actions and attitude of the UK Government towards Europe are jeopardising the administration of justice in Scotland.

Road to Recovery Programme (Methadone)

9. Annabel Goldie (West Scotland) (Con): To ask the Scottish Government what steps have been taken since the introduction of the road to recovery programme to monitor the number of patients on methadone who have either had their prescription reduced or have ceased taking it. (S4O-01394)

The Minister for Community Safety and Legal Affairs (Roseanna Cunningham): Before 2007 and the introduction of the road to recovery programme, such information was not available. To fill the gap, the Government has invested in and enhanced the Scottish drug misuse database. That has improved the information that is available on people who enter drug treatment, people's pathways through treatment and the outcomes that they achieve. The first release of the information will be published by the Information Services Division of NHS Scotland on 18 December 2012. The report will include information on a cohort of people in specialist drug treatment, including information on prescribed and illicit drug use.

We are committed to ensuring that drugs services in Scotland are as effective as we can make them. That is why we recently commissioned an independent expert group to gather further evidence on opiate replacement therapies that are used to treat people with drug addictions.

The road to recovery programme does not favour one form of treatment over any other. Decisions on the most appropriate treatment for an individual are clinical decisions and are taken in line with the UK guidance, "Drug misuse and dependence: UK guidelines on clinical management".

Annabel Goldie: I thank the minister for what was possibly the fullest answer that I have ever received to a question of this type in the chamber.

I welcome the fact that the data are to be produced, although it is unfortunate that we will have to wait until December for them. Will the data specifically include a treatment regime for methadone patients whereby they are entitled to know the clinical advice about the duration of the programme and whether there is any possibility, at their request, of having their dosage reduced?

Roseanna Cunningham: The information will contain as much as we can possibly provide at this stage. As Annabel Goldie knows perfectly well, we have made constant and consistent improvements in the information gathering on drugs since the Government came into office in 2007; far more information is available now than there ever was before. However, we are not complacent about the situation that we are in with any aspect of the policy, and that includes opiate replacement therapies.

I know that Annabel Goldie has a great interest in the issue and I will continue to have private discussions with her about the way forward.

The Presiding Officer (Tricia Marwick): Before we move to First Minister's question time, members will wish to join me in welcoming to the gallery the ambassador of El Salvador, His Excellency Mr Werner Romero. *[Applause.]*

First Minister's Question Time

12:00

Engagements

1. Johann Lamont (Glasgow Pollok) (Lab): To ask the First Minister what engagements he has planned for the rest of the day. (S4F-00911)

The First Minister (Alex Salmond): Yesterday I had the great pleasure of meeting the Ambassador of El Salvador and today I will have meetings to take forward the Government's programme for Scotland.

Johann Lamont: I would like to ask the First Minister a familiar question about whether a separate Scotland would be a member of the European Union. It is a question that Andrew Neil asked him on 4 March:

"Have you sought advice from your own Scottish law officers in this matter?"

Starting his answer with the words, "We have, yes," could the First Minister get to, "No, we haven't," in 27 words?

The First Minister: The 27 words that Johann Lamont refers to are, of course, the words that were taken out of the Labour Party press release. I do not think that it is a great argument to attack the probity of Government when you remove 27 words from your press release. It is not the most ingenious tactic, even from the Labour Party.

Yes, of course, an independent Scotland will be a member of the European Union.

Yesterday, the member of the European Parliament, Catherine Stihler, wrote to me to ask me to formally investigate whether the ministerial code had been broken in relation to the existence and content of legal advice on Scotland's continued membership of the European Union. I confirm to the chamber that today I have agreed to that request by referring the matter to the independent panel of advisers on the ministerial code.

Because the matter touches on an area of the code that relates to the law officers' prerogative in terms of the existence and content of legal advice, and our two members of the panel are both distinguished former Lord Advocates, on the advice of the permanent secretary I have invited Sir David Bell to join the independent panel of advisers. Sir David is vice chancellor of the University of Reading and a former permanent secretary of the United Kingdom Department for Education. He will lead the investigation into this matter.

The findings of the independent advisers will be made public. I will accept them and I hope that all members of this chamber will do the same. I observe that there have been five references since I have been First Minister and that each one has found in favour that the ministerial code has been abided by. I hope that on this sixth occasion, given that I have said that I will accept the findings, the Opposition parties will find themselves able to do the same.

Johann Lamont: In among all that, the First Minister astonishingly asserted what Scotland's position would be in Europe post independence. That is despite the fact that in five and a half years he has not asked the question and that he now tells us that, when he gets the answer, he will not share it with us.

The First Minister talks about the interview and the 27 words. I have the transcript here. The First Minister seems to be asking the people as Marx—Groucho Marx, that is—asked before him:

“Are you going to believe me or the evidence of your own eyes?”

I suppose that you cannot expect a straight answer from a First Minister who is as straight as a corkscrew, but let us try again. Why did the First Minister—*[Interruption.]*

The Presiding Officer (Tricia Marwick): Order.

Sarah Boyack (Lothian) (Lab): Listen to the question.

Johann Lamont: Why did the First Minister say that he had sought advice from the law officers when he had not? Why did he give that impression to this chamber and why did he go to court at our expense to stop the release of advice that he knew did not exist?

The First Minister: Of course, if that had been the case, the Labour Party would not have found it necessary to omit 27 words across three answers from its statement.

Let me see if I can explain the point to Johann Lamont. In terms of asking for specific advice on a legal question from law officers, you are bound by the ministerial code in terms of not revealing not only the content of the advice but its existence. Many times in this chamber—and I will cite them for Johann Lamont if she wishes—I have upheld that.

However, there is a second, quite different process. Every major document published by this Government is underpinned by law officers' advice. When asked for specific advice, the law officers give their opinion on what is legal; with regard to the underpinning of documents, they will point out anything that is obviously against the law. That is the difference, and it is a distinction

that I have made a number of times in this chamber. It is absolutely clear when we read the full interview with Andrew Neil that what is being talked about is in terms of both the debate and the documents. That is why that section of the interview finishes with the comment that the documents that have been published are

“consistent with the legal advice that we received”.

That is exactly the format of what was said.

In terms of the Government's defending the ministerial code through court action, I have been doing a little bit of research and now find that in the two years that the Labour Party was bound by the Freedom of Information (Scotland) Act 2002 it took five cases to the Court of Session to defend these principles and on disclosure. That compares with the two cases that we have taken to court in five years. I say as gently as I can to Johann Lamont—who was a member of that litigious Government in the Labour Party—that those who take five cases in two years to the Court of Session are in no position to preach to other people about the allocation of public money.

Johann Lamont: I have to say to the First Minister in the gentlest of terms that, given the seriousness of the charges that have been made to him, the idea that that constitutes any kind of answer is completely ludicrous. The people of Scotland need to trust what he says and, on that performance, they certainly do not. He says, “We can't say that we are even asking for advice”—but the Deputy First Minister stood here on Tuesday and said that she was asking for that advice. Why does it have to be secret?

This is the reality about what is a serious issue. The First Minister wants an honest debate about what is going to happen to the future of Scotland so he starts it by asserting—and he did it again today—that we would be in the EU but would not have to join the euro. However, the First Minister does not actually know that because in five and a half years he has not asked. Yesterday, the Spanish foreign secretary said that Scotland would have to apply to be in the EU and would be at the back of the queue. The First Minister says that he is wrong, but he does not know because he has not asked. The First Minister says that we would keep the pound, but he does not know that either, because he has not asked.

The reality is that the First Minister will say anything to get through the moment and then ask us to take his assertions on trust. Does he not realise that after this week nobody trusts him?

The First Minister: I would have thought that, given that this debate has lasted for a considerable time, Johann Lamont would have taken the precaution of at least reading the ministerial code. She just made the contrast when

she asked why I could not reveal the existence of legal advice while Nicola Sturgeon this week told the chamber that we were seeking specific advice on this question. I point her towards understanding and reading the ministerial code, paragraph 2.35 of which says:

“The fact that legal advice has or has not been given to the Scottish Government by the Law Officers and the content of any legal advice given by them or anyone else must not be revealed outwith the Scottish Government without the Law Officers’ prior consent.”

When Nicola Sturgeon obtained the law officers’ prior consent, she was able to tell the chamber that we were seeking the specific legal advice.

I would have thought that, given that Labour ministers upheld the same ministerial code and that Johann Lamont was a Labour minister, that at least would now be understood in this debate. I hope that, now that the point has been cleared up for Johann Lamont, she will accept it. *[Interruption.]*

The Presiding Officer: Order.

The First Minister: It is clear that the issue is about prior consent—I did not have prior consent and Nicola Sturgeon had prior consent. Is that really complicated?

I direct Johann Lamont to the comments of the Spanish foreign minister on 24 February this year, when he said:

“If in the UK both parties agree that this is consistent with their constitutional order, written or unwritten, Spain would have nothing to say, just that this does not affect us. No-one would object to a consented independence of Scotland.”

That brings us to the key point, which is that, in the Edinburgh agreement, under clause 30, the process by which independence for Scotland could be secured was agreed. That is the point that the Spanish foreign minister was making this year. Under those circumstances, we have sought the advice of the law officers, and that advice will inform the white paper on independence. That seems to me to be substantial progress in the debate, giving Johann Lamont the information that she claims she needs.

Johann Lamont: I am asking for the information that the people of Scotland require to make the decision in future. The First Minister says that the difference between him and the Deputy First Minister is that she asked permission to tell us that she was going to get advice. Could he not have asked permission to tell us that he had not asked for any advice?

Members might find this hard to believe, but I actually feel for the First Minister. All his life, he has fought for this and now he knows that his argument does not meet the times. Now he knows that it does not make sense for Scotland, so he

makes things up instead. No one wants the euro, so in his world he pretends that we would not have to have it, even though he knows that we would. Before now, Alex has always got his way. His need for a place in Scottish history comes before the needs of the people of Scotland.

As I said, I feel for the First Minister. His argument is falling apart in front of his eyes, and his own back benchers know it. His deceptions are being found out and no one believes him any more. How can this country have an honest debate about our future when we cannot trust a word that Alex Salmond says?

The First Minister: In the climax of Johann Lamont’s question, she actually almost directly quoted the Prime Minister. How appropriate that those in the better together campaign are even sharing phrases.

Let me tell Johann Lamont something for nothing. I think that it is worth while for Scotland to govern its own affairs and to escape from the welfare reform that is impoverishing our fellow citizens. I think that it is important for Scotland to take its place as an independent member of the European Union. Johann Lamont should look at the huge number of authorities who have said that over the years, which I have cited many times in this chamber.

It is of fundamental importance that we elect the Government that we want and that we do not have one foisted on us by Westminster. It is fundamentally important that this chamber and the Scottish people see Scotland as an independent member, equal with other nations in the European Union. Self-government for Scotland and proper representation by a Government that reflects the interests of the Scottish people—that is entirely the argument that will carry Scotland in two years’ time.

Prime Minister (Meetings)

2. Ruth Davidson (Glasgow) (Con): To ask the First Minister when he will next meet the Prime Minister. (S4F-00907)

The First Minister (Alex Salmond): I have no plans in the near future but, of course, I met him last week to sign the Edinburgh agreement.

Ruth Davidson: And, on that day, I believe that your advisers told you not to look too triumphant. It is amazing what 10 days can do, eh?

For days, we have had more ducking and diving than Del Boy from the First Minister as he avoided the conclusion that every fair-minded person has already reached, which is that he has misled the country into believing that his case for Scotland’s place in Europe was based on proper legal advice. Now, if we believe the Deputy First Minister, that

was all a fantasy—“This time in 2014, Nicola, we’ll all be millionaires.”

However, perhaps this politician of the year is less Del Boy and more Bill Clinton—“I did not have legal relations with that man, Mr Mulholland.” [Interruption.]

The Presiding Officer: Order.

Ruth Davidson: The fact is that Mr Salmond and his deputy cannot both be right. Either the First Minister misled the BBC and the nation into believing that he had legal advice and then spent thousands in a devious attempt to cover his tracks or, much more seriously, the Deputy First Minister has misled Parliament by telling us that no such advice existed all along when, in fact, it did, which is a resignation offence.

Which one is it? Did he mislead the public or did she mislead Parliament?

The First Minister: I think that about 12 per cent of that question was the sort of question that we should hear in this chamber.

I do not know whether Ruth Davidson listened to the answer to the first question, but I tried to explain the distinction between seeking specific legal advice from the law officers, which is bound by the ministerial code, and—as I have referred to a number of times in the chamber—the legalling of major Government documents. In the latter case, the law officers tell us whether there is anything wrong with our statements; in the first case, they have to say what their opinion is. It is a clear distinction, and I hope that Ruth Davidson now understands it.

In terms of the question about Nicola Sturgeon and myself, according to the ministerial code prior consent must be sought. The Deputy First Minister had that prior consent and, therefore, what she told the chamber on Tuesday was perfectly acceptable.

I am struck by the fact that the Conservative Party seems to think that this position on the ministerial code is unique to this Government. In fact, it has been carried by every Westminster and Scottish Government since time immemorial. Across many countries, the same precepts exist in terms of the confidentiality of legal advice. I have here a letter from a Scottish citizen to the Attorney General’s office. On 21 November last year, he asked Dominic Grieve’s office whether it held legal advice on the subject of Scottish independence. The reply that he got was:

“I am unable to confirm or deny whether this department holds any information”.

I say to Ruth Davidson that what is sauce for the goose is sauce for the gander.

Ruth Davidson: It seems that the only sauce that the goose needs to get around the ministerial code is a panicked phone call on Tuesday morning because it seems like a good day to bury bad news.

The inescapable truth is that neither the First Minister nor his deputy can be trusted to tell the truth. Maybe it is not Bill Clinton; maybe it is Richard Nixon—“I am not a crook.” Maybe the First Minister is not a crook, but the people of Scotland simply cannot believe a word that he says—[Interruption.]

The Presiding Officer: Order.

Ruth Davidson: And, because of him, we cannot believe a word that his deputy says either.

The one way to clear this up is for the Lord Advocate to come to the chamber to explain what law officers were asked, what they said and when they said it. Will the First Minister now take the appropriate action to ensure that Frank Mulholland appears before Parliament at the earliest opportunity?

The First Minister: I am amused by these references to American politicians. We have had Bill Clinton and others, but I would have thought that the American politician that Ruth Davidson would be most familiar with is Mitt Romney. Is he not the one who dismissed 47 per cent of the American population? Of course, Ruth Davidson dismisses 88 per cent of the Scottish population.

I am reminded that there is nothing new under the sun. I have here a cutting from the *Scotland on Sunday* of 8 March 1992, when the Tory and Labour parties were queueing up to tell Scotland that it would not be admitted to the European Union. Here is what the cutting says:

“A former European Court judge has cast doubts on John Major’s assertion that if Scotland became independent it would have to apply to join the EC as a new state ...

Lord Mackenzie-Stuart, a judge on the European Court of Justice, told *Scotland on Sunday* that devolution would leave Scotland and ‘something called “the rest” in the same legal boat. If Scotland had to reapply, so would the rest.’”

The really interesting thing about it is that, as I recall, that legal advice was sought from Lord Mackenzie-Stuart by the Conservative Party. The argument has been going on for a long time.

On the question about law officers, the great thing about law officers in Scotland under the Scottish Government is that they are independent in terms of how they conduct their affairs. They do not, like the Attorney General or the Advocate General for Scotland, take part in the political argument. I think that, basically, people in Scotland prefer the law officers to be independent, and we will keep it that way.

Unemployment

3. Ken Macintosh (Eastwood) (Lab): To ask the First Minister what the Scottish Government's response is to the latest labour market statistics suggesting that there has been a quarterly increase in unemployment in Scotland compared with a fall across the rest of the United Kingdom. (S4F-00915)

The First Minister (Alex Salmond): The Scottish Government is taking a range of measures, which I know that Ken Macintosh has agreed with, consistently calling on the Chancellor of the Exchequer to boost capital spending to accelerate recovery, create jobs and return the public finances to balance. That is what Ken Macintosh supported when he backed our calls, in the economy debate of 11 September, to implement shovel-ready projects.

I caution Ken Macintosh about the statistics for the United Kingdom. Unemployment across the UK fell by some 50,000, but we know that 100,000 temporary jobs were created for the Olympics in London—a point that has been made by some of his colleagues. I hope that Ken Macintosh maintains his support for the Scottish Government in trying to obtain the capital investment to get the economy moving. It would be a great deal easier if we could just implement those changes instead of having to ask a Tory chancellor.

Ken Macintosh: Does the First Minister accept that 30,000 of the jobs that have been lost in little over a year were in the public sector in Scotland—that is, nurses, police support staff and civil servants? Those areas are the direct or indirect responsibility of the First Minister himself. If the First Minister is not able to explain why unemployment is higher in Scotland than in the rest of the UK, can he tell us how many jobs—how many care assistants and teaching assistants—will be lost because of his 4.3 per cent real-terms cut to local government in this year's budget?

The First Minister: If Ken Macintosh has looked at the statistics as closely as he should, he will know that the fall in public sector employment in Scotland has been much less than the fall in public sector employment across the UK because we have approached things differently in central Government and local government in Scotland. For example, we have a policy of no compulsory redundancies in the Government and its agencies and in the national health service.

Perhaps Ken Macintosh can turn his mind again to agreeing with the Government that we need a different economic policy that will take the economy out of recession by stimulating capital investment. Even the gross domestic product figures that were released today show another decline in the construction sector throughout the

UK. Surely, that is proof positive that the calls by this Government—supported by Ken Macintosh—are on the right lines for bringing the economy out of recession. Ken Macintosh must accept that the macroeconomics of Scotland are controlled by the UK chancellor in London at present. I repeat my question: would it not be better if we controlled these towering heights of the economy and could do something about the circumstances and help our people?

Forth Replacement Crossing

4. Colin Keir (Edinburgh Western) (SNP): To ask the First Minister what recent progress has been made with the Forth replacement crossing. (S4F-00927)

The First Minister (Alex Salmond): The project is progressing well, it remains on time and on budget and people who pass the Forth can see the extraordinary progress that is being made on the new crossing. By the end of the year, the new overhead gantries that form part of the Fife system on the M90 between Halbeath and Admiralty junctions will be commissioned. Improvements to junction 1A of the M9, including the new west-facing slip roads, are now scheduled to finish early next year.

Colin Keir: Does the First Minister agree that Elaine Murray MSP's comments, which questioned the necessity of Scotland's largest infrastructure project, show the shambolic nature of the Labour Party's transport policy? Will he confirm that the Government will remain fully committed to delivering this vital artery in Scotland's transport network on time and on budget?

The First Minister: It was an extraordinary interview. I think that we need to know: do Labour Party members still support the replacement crossing that they voted for in this chamber? What are they saying to the 1,100 people who are now directly employed in that project or the more than 306 Scottish companies that are already benefiting from contracts and subcontracts? When the project is making such great progress and so much work is being done that 1,100 people are working on it, if the Labour Party decides at this moment to withdraw its support, does it want us to finish the gantries but leave the rest of the bridge? I suspect that Labour members want to get their act together, change their mind again and tell people in Fife and Scotland that they actually support the new crossing across the Forth.

Elaine Murray (Dumfriesshire) (Lab): Perhaps the First Minister and Mr Keir might have read the transcript of the article or even just the article itself. Surely, First Minister, no fair-minded person would consider that there was any suggestion that the project should be scrapped—or even that it

could be, now that his lot has signed the contracts for the Chinese steel and the European contract.

Is the First Minister not aware that many commentators, including Professor John Kay at the Finance Committee yesterday, are questioning the cost—

Members: Where is the question?

The Presiding Officer: Can we get to the point, please?

Elaine Murray: This is the question: is the First Minister aware that people are questioning the cost of the project and its value to the Scottish economy, particularly considering his party's procurement policies?

The First Minister: I am grateful to Elaine Murray for confirming that, just occasionally, our position might be misrepresented by journalists.

One thing that I find difficult to answer, given that the Forth replacement crossing is on time and under budget, is that if Labour members supported the project at the budget level that was expected, how on earth can they be withdrawing their support now when it is under budget and costing less than we expected? Perhaps Elaine Murray could arrange for a further interview with *Holyrood* magazine where she can clarify the position and then come to the chamber. She is fortunate that she will not have to account for the situation, but she might just have to explain it to her leader on the front bench.

Poverty

5. Drew Smith (Glasgow) (Lab): To ask the First Minister what steps the Scottish Government is taking to address poverty. (S4F-00913)

The First Minister (Alex Salmond): The biggest threat to poverty in Scotland is the United Kingdom Government's welfare reforms. That is why, in terms of action, the Deputy First Minister announced this week the creation of a new Scottish welfare fund, through which an additional £9 million will be allocated to funding to be transferred from the Department for Work and Pensions. That will offer an extra 100,000 vulnerable Scots financial help.

However, I accept, as I think that Drew Smith accepts, that mitigating the whole range of benefit cuts that are coming down the road from the UK Government will simply not be possible within the finances of this Parliament. Surely the solution is for this Parliament to have control over such matters, so that we can devise the policies for the benefit of the Scottish people.

Drew Smith: I welcome the Scottish welfare fund, although the First Minister will be aware that, as a cash-limited fund, it is likely that it will

continue to run out before the end of the year. I think that Government officials have already confirmed that.

The First Minister will be aware that the "A Wider Lens" report, which was released by Demos and Quarriers this week, indicates that thousands of families are already facing severe disadvantage in Scotland today, including more than 10 per cent of families in Glasgow.

Given that progress on reducing child poverty has halted in Scotland in recent years, what does the First Minister consider are the key drivers of change needed by those families and the communities that they live in? What targeted support is the Scottish Government offering to those families and children that might impact on that situation?

The First Minister: I point Drew Smith to the fact that the changes that we are making to the Scottish welfare fund will help an additional 100,000 vulnerable Scots. That seems to me to be a lot of folk.

In my first answer to Drew Smith, I accepted that we cannot, across the range of benefit cuts that are coming from Westminster, make good the difference. We just cannot do that with the finances of a devolved Parliament.

However, we have made up that difference in two hugely significant areas. The first of those is the council tax benefit, which we were given control of, but with a 10 per cent cut. By working and reaching agreement with local authorities, the Scottish Government is making good that difference for hard-pressed families. The second is the Scottish welfare fund. Money has been transferred from the Department for Work and Pensions, but we have had another 10 per cent cut. However, we have made up the difference with an additional £9 million over the period.

Those seem to me to be examples of great action by this Government to do our best under the most difficult circumstance. I make no claim that we can compensate for every reduction in the budget by the UK Government, but I hope that when Drew Smith thinks about that—I know that he does, because he cares about the issue—surely the solution for the people of Scotland is to have control over those budgets so that we can act in the best interests of the people of Scotland all the time, and not just mitigate the impact of Westminster cuts.

Wind Farms (Landscape)

6. Liz Smith (Mid Scotland and Fife) (Con): To ask the First Minister whether the Scottish Government considers that wind farms do not have a negative impact on the landscape. (S4F-00909)

The First Minister (Alex Salmond): Wind energy, which is part of the wide range of renewable technologies that we want to develop, will play a vital role in helping us to meet our climate change targets and that will deliver a secure and sustainable energy mix for Scotland that delivers jobs and investment to communities across the country.

It is vital that those developments are delivered sustainably and that they take place in the most appropriate locations. We have a planning and consent system that is open, transparent and inclusive, which ensures that developments only go ahead subject to their impacts on landscape and on a number of other issues being acceptable. That view, of course, is shared across the Government and by its stakeholders.

Liz Smith: Given the admission by VisitScotland that the building of a wind farm in Dumfriesshire could have a negative impact on the landscape and the substantial growth in the number of local communities opposing wind farm applications, which includes at least one Scottish council that is seeking a moratorium on future developments, on what evidence—legal or otherwise—has the First Minister based that opinion?

The First Minister: First, I am sure that Liz Smith would not want to misquote VisitScotland. She will have seen that the chief executive has said that the press comments were inaccurate in a letter to the newspapers concerned.

Secondly, Liz Smith should know that the figures demonstrate that not every wind farm application is approved. They are approved if they conform to the planning conditions and the right circumstances. I can put in the Scottish Parliament information centre a copy of the consents that have been granted and those that have been refused by the Scottish Government, which validates that position.

I am concerned when I hear the Conservative Party allude to a moratorium on wind energy development. There are now, I think, 18,000 people employed directly in renewable energy across Scotland. [*The First Minister has corrected this contribution. See end of report.*] What will the Conservative Party say to the folk in Machrihanish who are employed to build wind towers? Will it say that those people should be out of a job, that it does not want them anymore and that they are being unproductive, given the success of many of the wind farm developments in Scotland, including the 125,000 visitors to the Whitelee visitor centre since it opened a couple of years ago?

My other difficulty is whether that is the consistent view of the Conservative Party. My attention has been drawn to the comments of

Adam Bruce, the former Conservative candidate for north-east Fife. This year he said:

“Wind energy reduces price risk and cuts bills even when subsidised. It delivers economic growth, national income and jobs. The UK has the largest potential share of wind energy of any country in the EU. We need more wind energy in the UK’s electricity mix, not less.”

The Conservative Party should do two things. First, it should clarify what its policy is and, secondly, it should attempt to speak with one voice and not con the people.

Neil Armstrong

The Deputy Presiding Officer (John Scott):

The next item of business is a members' business debate on motion S4M-03911, in the name of Willie Coffey, on Neil Armstrong. The debate will be concluded without any question being put.

Motion debated,

That the Parliament notes with sadness the death of Neil Armstrong, the first man on the moon and commander of Apollo 11, which landed on the Moon on 20 July 1969; recognises the significant human and scientific achievement made by the Apollo 11 team of Neil Armstrong, lunar module pilot, Buzz Aldrin and command module pilot, Michael Collins; notes Neil Armstrong's family connections with the town of Langholm in Scotland, and echoes the sentiments expressed by commander Armstrong as he set foot on the moon when he said, "that's one small step for man, one giant leap for mankind".

12:36

Willie Coffey (Kilmarnock and Irvine Valley)

(SNP): With great pleasure, I offer a few words in memory of Commander Neil Alden Armstrong, who died in August this year.

As everyone surely knows, Commander Armstrong was the first man to set foot on the moon on 20 July 1969. From that moment, he became a hero to not only the American people, but the people of the world. His carefully prepared line:

"That's one small step for man; one giant leap for mankind",

which he said as he stepped from the ladder of the lunar module on to the moon's powdery surface, is surely one of the most significant and enduring quotations in human history. It announced that we, as a species, had made the first journey from earth to another world.

Neil Armstrong was born in Ohio in America in 1930. He was the oldest of three children and was of Scottish and German ancestry. I have no doubt that other members will reflect on his family connections with Langholm. I have watched a clip of the 1972 ceremony, and it is possible to see the sense of pride that Neil Armstrong had in his Scottish roots when he accepted an invitation, only three years after the landing, to become a freeman of the muckle toon.

He could fly planes before he could drive a car. At 15, he got his first flight certificate. He served his country from 1949 to 1952 and, as a pilot during the Korean war, survived by ejecting from his fighter plane. He had to repeat that feat some years later when testing a prototype of the lunar module, which was nicknamed the flying bedstead. Apparently, he ejected from it with less than a second to spare, walked back to his office

and got on with his work while the prototype vehicle exploded in flames.

A masters graduate of aeronautical engineering, he became an astronaut in 1962, first commanding the two-man Gemini craft before the more famous three-man Apollo programme was initiated. Then, of course, the most famous journey in the history of man was being planned. In 1961, President John F Kennedy stated the aim that America would land a man on the moon—and get him back safely—by the end of the decade. So it proved.

The Apollo missions began and gradually got closer to the moon without landing there until, in 1969, Apollo 11, with Commander Armstrong, Buzz Aldrin and Michael Collins, took off from Cape Kennedy in the magnificent Saturn V rocket on 16 July. Their mission was indeed, in the words of the famous science fiction series "Star Trek", to go where no man had gone before, land on the moon and get back safely, but it was science fact—it was actually happening.

I recall being totally gripped as an 11-year-old by that adventure and the five-day journey to get to the moon. For a young boy or girl who was interested in science in those days, it was the dream of a lifetime to be able to witness a spacecraft leaving earth and landing on what we then called another planet. I remember having a huge wall poster that showed all the planned stages of the journey.

The mission was, of course, a stunning success. While Michael Collins orbited the moon in the command module Columbia, Neil Armstrong and Buzz Aldrin made the descent to the lunar surface. In typical fashion, Commander Armstrong had to take manual control of the lunar module—or the eagle, as they called it—and he put the vehicle on the surface with about 45 seconds of fuel remaining, which was an experience that he was well used to.

Roughly 100 hours after the launch, Commander Neil Armstrong descended the ladder, uttered his immortal words and made history. It is a lovely thought that the moon's first-foot should be a wonderful man with a strong Scottish connection. Buzz Aldrin joined him 20 minutes later and, together, they spent only about two and a half hours on the surface, collecting samples, taking pictures and filming, before blasting off to rejoin their colleague for the journey home.

To say that they received a hero's welcome would be an understatement. In those days, the Apollo crafts landed in the sea to be picked up by American aircraft carriers. On they went to a life that, for them, was changed forever.

In 2008, Commander Armstrong was recognised by the University of Edinburgh, which awarded him an honorary degree. I recommend watching his speech, during which he told the fascinating story of how he had discovered that two of his most revered scientists of all time—our own James Watt and Benjamin Franklin—were already members of a lunar society in the 18th century. He had to find out whether their research could help him on his Apollo missions.

He even spoke in a Scottish accent as he recounted how, to his surprise and amusement, he discovered that the two gentlemen could best get home from the meetings at which they were reasonably regular attenders, after having enjoyed some conversation, whisky, dinner and claret, through the darkened streets of Birmingham when the moon was full, so their regular monthly gatherings became known as meetings of the lunar society.

Neil Armstrong, our reluctant and gentle hero, revelled in telling that story in Edinburgh, and the warmth of the manner in which he recounted it tells us something about the love and the passion that he had for science and our achievements throughout the centuries.

Neil Armstrong is one of the greatest heroes of all time. When the memory of other individual achievements fades with the passing of time, his name will stand out proudly for ever more. Centuries will pass, but he will always be the first man to have set foot on another world—an ambassador for the human race and for peace.

The eagle landed in 1969, and it will forever remain a symbol of man's achievements in space. I hope that it will also remind future generations that a very special man took to the skies on our behalf and came back safely to relive the dream with us.

12:43

Joan McAlpine (South Scotland) (SNP): I congratulate Willie Coffey on securing the debate. It is fitting that our Parliament pays tribute to Neil Armstrong, who was a pioneer in so many respects. As well as being the first human being to set foot on the surface of the moon, he was the first person to be made a freeman of the burgh of Langholm in Dumfriesshire. I am delighted to support the efforts of the townspeople and the Clan Armstrong Trust to conduct their own commemoration of Mr Armstrong's life and achievements and, in particular, his 1972 visit to the town. I understand that that commemoration will go ahead next year and that it will be a major event.

Shortly before his death, Neil Armstrong gave a rare interview to—bizarrely—an Australian website

that was linked to a professional accountancy body. It was a great scoop for the journalist concerned. It appears that Mr Armstrong agreed to the interview as a tribute to his father, who had been an auditor.

In the interview, Neil Armstrong said that he thought that it was a pity that the cause of space exploration had become a political football and that it was disparaged by those who considered it a waste of time and money. He told the interviewer:

"NASA has been one of the most successful public investments in motivating students to do well and achieve all they can achieve. It's sad that we are turning the program in a direction where it will reduce the amount of motivation and stimulation it provides to young people."

NASA plays a leading role in education in America, where it organises study trips for children of all ages. This year, it celebrated a summer of innovation, which was aimed at stimulating through practical experiment children's interest in science, technology, engineering and mathematics—STEM—subjects.

It is fitting that we in Scotland have taken on board Neil Armstrong's concerns and that we use space exploration to inspire young people to pursue careers in engineering and technology. For 10 years, our young people have had the opportunity to participate in the Scottish space school, which is a collaboration between NASA and the University of Strathclyde.

The space school aims to provide inspiration, increase motivation and raise young people's aspirations in relation to STEM subjects. Since the space school's inception in 2002, 1,300 pupils from high schools across Scotland have taken part in it. Of them, 400 have now graduated and are employed in well-paid science and technology jobs.

I can testify to the programme's effectiveness on a personal level. When she was just 16, my eldest daughter won a place on it and spent a life-transforming week at NASA's base in Houston, Texas with 25 other young Scots. They worked with astronauts and engineers, learned about the latest futuristic technology and came away inspired.

Like many young women, my daughter had previously thought about applying for an arts degree, but the trip to Houston changed all that by teaching her that engineering was a creative and exciting occupation. She went on to study mechanical engineering. She is now 23 and is working for a Scottish company that services the oil and gas industry and the renewables industry in the North Sea.

This week—tomorrow, in fact—another cohort of young Scots from the Scottish space school will

head to NASA's Johnson Space Center. I will name them. I give my best wishes to Francesca Capaldi, Niall Ferguson, Yola Jones, Susie Little, Stephen Lynas, Kirsty McLachlan, Lewis Miller, Ben McSeveney, Eilidh Oliphant and Zoe Parker. I am sure that we all wish them the very best and hope that they turn out to be our engineers of the future.

The Scottish space school's motto is:

"The sky is NOT the limit".

That is highly appropriate not just for our young people, but for our nation. I am sure that Neil Armstrong would have approved of that motto.

12:47

Iain Gray (East Lothian) (Lab): I, too, congratulate Mr Coffey on securing the debate. We should mark the passing of Neil Armstrong not just because of his links to Scotland, but because of the significance of the first moon landing. Like Mr Coffey, I remember getting up to watch it on television. I fear that I was 12, not 11, but anyone who is our age remembers the event. It provided a sense not just of watching history being made, but of sharing the event with the whole of humankind.

Armstrong was the first of only 12 who have walked on the moon's surface. None of them was the same when they returned. To look back at our earth and see it as it really is provides a life-changing perspective that we can only imagine. Armstrong always carried that profound knowledge with grace and humility.

Armstrong gained that knowledge with courage. We should not forget that Apollo 11 travelled to the moon with a guidance system that had less processing power than the washing machine in my kitchen, never mind the smartphone in my pocket. As Mr Coffey said, Armstrong landed the lunar module manually and set it down on the Sea of Tranquillity with seconds of fuel left.

We are politicians, and we should remember that Armstrong's mission was political. When Kennedy told Congress that the US would put a man on the moon, no one knew how that could be done. That was politics, not science, and pretty venal politics at that. The task was launched by a supposedly vigorous new President who, in truth, could stand up only with the aid of a back brace and a toxic cocktail of stimulants. The challenge was to a supposedly modern nation but, in fact, tens of millions of its own people were denied the vote and even the right to sit, eat or study alongside their white compatriots in those days. The aspiration was supposedly noble but, in fact, it was driven by the basest of desires—to dominate the cold war world through barefaced bravado. Yet with the words,

"one small step for man; one giant leap for mankind",

Armstrong transcended all that to make us proud. Even his fluffing of the words simply serves to remind us that we are fallible, but capable of greatness.

In chambers such as this, we spend our days debating ideas of the nation state, democratic socialism or free markets whose roots lie in the 19th century or even the 18th century, but in the 21st century, somehow we can no longer raise ourselves to Armstrong's 20th century achievement or find it within ourselves to reach for the stars. We cannot know what otherworldly landscapes Armstrong walks now or what infinite horizon he scans, if any, but we know for sure that we will follow him there one day. However, we have turned away from following that small step that he took in 1969.

My head tells me that we cannot afford to push beyond the boundaries of our own world while so many in it suffer so much, but as we wrestle with issues that seem so great and intractable to us, knowing that they must have looked so much smaller and more manageable from the Sea of Tranquillity, my heart asks whether we can afford not to push the limits of our own possibility in the way that Neil Armstrong did in 1969.

12:51

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): The story of Neil Armstrong is the story of what a country can achieve when it cleaves to its bosom the highest of ambitions. It was, of course, driven by the flight on 12 April 1961 of Yuri Gagarin of the Soviet Union, who went for a single orbit around the earth. That was the ultimate, highest and greatest of game changers.

When, on 25 May 1961—only a few weeks after that flight—John F Kennedy set his country on the path that took Americans to the moon, that was deemed to be absolutely impossible. No one knew how to do it or that it could be done. There were huge technical challenges to be overcome.

The leading plans—there were four alternatives—relied on the rendezvous of space vehicles in orbit around the moon. That had never been done around the earth at that stage, far less around the moon. The onboard navigational computer to which Iain Gray referred—the Apollo guidance computer—had only 1.3W of electricity and only 2,000 words of computer memory to do its computations.

Some of the challenges were organisational. The programme involved 400,000 people and 20,000 firms and universities. As an organisational

challenge in a short period of time, it was beyond previous contemplation.

When Neil Armstrong stepped on to Apollo 11 with his fellow astronauts, he knew that the flight was not without risk. Gus Grissom, Ed White and Roger Chaffee died on Apollo 1 in a flash fire on the launch pad and Vladimir Komarov was the first cosmonaut to be killed during space flight, on Soyuz 1. Like Gus Grissom, Vladimir Komarov was the first person from his nation to fly twice in space.

There were aspects of the programme that are perhaps little known and little regarded. Almost all the mathematical computations were undertaken by women. NASA decided to employ all-women teams to do the calculations because they were deemed to be more reliable and it was deemed that better intuition could be applied by the women. That built on the previous experience of Rear-Admiral Grace Hopper, who was the first computer programmer in the electronic age—Lord Byron's niece, Ada Lovelace, was the first at all, of course.

I had the good fortune in the early 1990s to stay for three nights with a guy called Lanny Lafferty, who worked for the jet propulsion laboratory. He was the man who designed and operated the first robot hand that grasped Martian soil. There is so much in the programme that is absolutely fascinating and it has contributed so much—Teflon, for example, and the computer that was the first to be built on integrated computer chips.

In today's modern world, we owe so much to this programme, but above all we owe so much to Neil Armstrong, who put his life on the line to inspire us and to inspire others. Ambition, courage and fine management delivered, but Neil Armstrong put his life on the line. Thank you, Neil Armstrong.

12:55

Elaine Murray (Dumfriesshire) (Lab): I, too, congratulate Willie Coffey on bringing this motion celebrating the life of Neil Armstrong to the chamber, not least because I submitted a motion along very similar lines.

Like Willie Coffey and Iain Gray, I am one of the members of this Parliament who is old enough to remember the excitement of the first moon landings. I am not saying how old I was at the time because I am slightly older than them. We had 10 days of BBC and ITV coverage, starting on 16 July with the launch of the Apollo 11, and we had the first-ever all-night broadcast on British television, recording Neil Armstrong stepping on to the surface of the moon at 3.56 am British time, followed 20 minutes later by Buzz Aldrin. I think that the first images were upside down and had to

be rotated so that we could see what was going on.

Looking back—as Stewart Stevenson and Iain Gray have said—from this time of the mobile phone and the iPad to the technology that was available in 1969 makes the achievement of the moon landing seem even more remarkable. Mr Stevenson has quoted some figures around the computing strength at the time—quite remarkable.

The moon landings inspired people of every generation. My grandparents were born at the turn of the previous century when people hardly even saw a motor car and a lot of people believed that the moon was made out of green cheese. My grandparents were absolutely astonished that in their lifetime a man managed to walk on the moon.

In the 40 or so years since, technology has advanced at an even greater pace—partly, as has been said, due to the developments associated with space travel, such as the internet. Iain Gray rightly pointed out the motivation behind the space programme but, through that expenditure, there was a huge improvement in technology. One of the things that inspires me and surprises me a bit now is the fact that technology now looks at very tiny horizons. Our technology is letting us look right inside the atom, to the sub-atomic particles, through the large hadron collider. When we think of the advances over 100 years, including a man on the moon and finding the Higgs boson, we see the remarkable achievements of science.

As MSP for Dumfriesshire, I want to mention the Langholm connection. The Armstrongs are one of the Borders clans—they originated in Cumbria but later relocated to Liddesdale, Annandale and Eskdale. The town clerk for Langholm at the time of the moon landings was one Eddie Armstrong, and he hit upon the idea of inviting his famous distant relative to become a freeman of the muckle toon. He was ably assisted in this endeavour by his deputy town clerk, Grace Brown, who—I am happy to say—is still an active member of the Langholm community more than 40 years later. Indeed, she organises the wonderful Langholm common riding breakfast every year.

Although Neil Armstrong was born in Ohio and had not lived in Scotland, like many citizens of the United States he was proud of his Scottish ancestry and, much to the surprise of the town, he accepted the invitation and the honour was conferred in Langholm parish church on 11 March 1972, when he visited the town as part of his world tour. At the time, he stated that he considered Langholm to be his home town. Neil Armstrong, as Joan McAlpine said, was the first freeman of the burgh of Langholm. For a long time he was the only one until just this month, when he was joined by a very worthy fellow freeman in David Stevenson. Mr Stevenson's honour was

announced shortly before Neil Armstrong's death, when he was not very well at all. Despite Neil Armstrong's ill health, he took the trouble to send Mr Stevenson a fulsome message of congratulation, saying that he could think of no one who deserved the honour more. That says an awful lot about the sort of person that Neil Armstrong was.

13:00

George Adam (Paisley) (SNP): The year 1969 started quite quietly, on a Wednesday, which was a strange start for such a decade-defining—or even world-defining—year. It was an important year for me, because it was the year that I was born.

I was there to witness the moon landing but I was only one month old at the time, so it is more from watching newsreels and films at a later date that I have seen everything that happened.

In that year, there were quite a lot of other groundbreaking things happening in the world. There was an ideal in those days, as Iain Gray said, that was all about looking at the big idea and the big picture, reaching for the stars and trying to be all that we could be. At that time, the first Concorde test flight took place and the Boeing 747 made its maiden flight.

There were big issues in 1969, and we must ask ourselves, "Where have we gone?" As children of the 1970s, we grew up wanting to be astronauts. My mother's friends would say to her, "What does George want to be this week?" and she would say, "George wants to be an astronaut."

As members can see, that did not work out—although some people might say that we in the Parliament are wired to the moon sometimes. I obviously had political ambitions, and when I found out that Neil Armstrong was an aerospace engineer as well as an astronaut, I realised that that was probably a wee bit too much for me to try to take on at that stage.

In the 1970s, space exploration was one of the most important things for us as children growing up. It was constantly there in literature and on television, and absolutely everywhere that we went.

I was looking at some of the information on Neil Armstrong, and it was interesting to read that he started off in 1958 in the US air force's man in space soonest programme. That does not sound like the sexiest of titles for a space programme, but its aim was to design a space plane that would go up and deliver satellites and come back down again. It is funny how some of the ideas from the past end up coming full circle; we are still talking

about some of those things and developing them now.

The funny thing was that the programme was cancelled only just before the plane went into full production, and Neil Armstrong was one of only two of the pilots in the programme who actually went to space in the end.

As other members have said, on April 12 1961 Yuri Gagarin officially started the space race by being the first man in space. Kennedy made his speech at Rice University on September 12, 1962, in which he said those famous words:

"We choose to go to the moon in this decade and do the other things, not because they are easy, but because they are hard".

Those lines alone define that era and exactly what everyone was trying to achieve.

It was a case not of, "We cannot do that", but of "We cannot do it, but let's try and achieve it anyway." That is a lesson that we have to learn, because we have lost our vision as politicians and as a community. We have lost the idea of looking at the big issues and the big world-changing ideals. As my colleague Stewart Stevenson said, so many practical things came out of the Apollo missions.

I and some of my younger members of staff have often talked about getting one of the Apollo 11 models and putting it in my office, just to remind us that we can achieve the impossible. Everyone, including the engineers, was told that there was no way that they could do it, and that it was not achievable with the technology that they had then, but they achieved it and showed the world. To this day, we are still talking about those things.

Much of what I was thinking about saying has already been said, but I will finish by saying that Neil Armstrong had a profound effect on my life. It sounds pretty incredible that a young boy from Paisley could be motivated by the first man on the moon, but his actions in July 1969 taught me that we can look at the stars and dream, or we can work hard, set targets for ourselves and achieve what is perceived to be the impossible. That seems to me to be not a bad legacy to leave.

13:04

Jamie McGrigor (Highlands and Islands) (Con): I formally apologise to the Presiding Officer and members in the chamber, especially Willie Coffey, for missing the start of the debate.

I congratulate Willie Coffey on securing today's debate. On behalf of the Scottish Conservatives, I extend our sympathies to the Armstrong family on the passing of one of the truly iconic figures of the 20th century and truly the bravest of the brave.

The landing on the moon was unforgettable to those who experienced it. Our generation had in some ways been conditioned to expect and await that achievement by space programmes, including the fictional “Star Trek”. The importance of man going where man had never trod before was taken for granted and it was felt that it was worth every penny; it was never questioned that it was the right thing to do.

Seeing William Shatner, or Captain Kirk of the starship Enterprise, speaking on “Hardtalk” on the BBC the other night, I was reminded of how his crew was made up of so many different nationalities, including of course a Scotsman—who will ever forget “Beam me up, Scotty”?—all trying to contribute towards a force for good. Although it was fictional, it was indeed inspiring and space travel gripped the world audience in a way that it does not do now.

The moon landing was a wonderful moment for Scotland and the United Kingdom, as the name Armstrong has such strong connections to the Scottish Borders, where Neil’s kinsmen originally came from. As well as creating excitement, the moon landing created a sense of optimism that man could look beyond mere earthly realms to a future of exploring the universe through international co-operation.

Willie Coffey is right to highlight Neil Armstrong’s family connections to Scotland. In 2009, I highlighted in a parliamentary motion the award from the University of Strathclyde of an honorary doctorate for William S McArthur Jnr, one of the most distinguished and impressive astronauts in recent NASA history and currently director of safety and mission assurance at the Lyndon B Johnson space centre and a winner of the NASA space flight medal and NASA distinguished service medal. I met Mr McArthur a few years ago, as he too has Scottish connections, through family roots in Argyll. I contacted him again in advance of today’s debate and I will quote what he said:

“On 1 July 1969, I entered West Point. My class faced a future dominated by Vietnam and the Cold War. On the evening of July 20th, finishing our third week as New Cadets, we marched en masse to a large auditorium to watch the Apollo 11 moon landing. It was stirring to witness such a positive achievement in the context of the dangerous future which we, as future Army leaders, faced. Did the Moon landing that night inspire me to be an astronaut? Not immediately, but it certainly firmly planted the idea that this was the pinnacle of human endeavour. The professional, unassuming way in which Neil Armstrong served provided an example we all strove to emulate. As my career progressed and the opportunity to apply to be an astronaut opened, the example set by Neil and his fellow early astronauts set the benchmark against which all of us aviators and engineers were measured. Many years later, lecturing Cadets in that same auditorium, I felt humbled to have had the opportunity to have followed along the same path travelled by Neil, if only for a short distance. Not to the

Moon, but at least out of the grasp of gravity, to view earth from orbit. Each mission, one more “small step” for humankind.”

I thank Bill McArthur for sending me those words. Neil Armstrong’s achievement and legacy continue to inspire people of all ages across the planet.

Now, people’s attention is switching from the moon to Mars, the red planet, and I noted on the BBC website that the roving robotic laboratory that is exploring the red planet has identified an area that they have called Glenelg and that the people of the Highland village of Glenelg have seen fit to twin with that. So, I hope that the Martians will one day come and enjoy a good dram with their counterparts opposite the isle of Skye.

13:09

The Minister for Learning, Science and Scotland’s Languages (Dr Alasdair Allan): Others have given very eloquent accounts of Neil Armstrong’s life and achievements. Perhaps I can add to them—without intending to be in any way flippant—by saying that it was thanks to Neil Armstrong that I first learned as a child of the existence of the town of Langholm. It was only some 25 miles away from where I lived, but in the Scottish Borders—with all that that traditionally implies—that was indeed a giant leap.

I mention that because, as others have said, one of the many generous things about the late Neil Armstrong was his willingness to work to inspire a whole generation about science—something of which his famous 1972 trip to Scotland and his on-going connections with his ancestral town were but parts.

I am grateful to Willie Coffey for giving us the opportunity to reflect on Neil Armstrong’s achievements and to restate our commitment to encouraging Scots of all ages to take inspiration from him and to strive to achieve new things in their lives and for their communities. Unlike Mr Adam, I had not quite arrived in this world when the moon landing happened, but I share his recollection of the importance of the space race and the culture around it to a generation of children.

During our debate, we have remembered Neil Armstrong as the first person to step on to the surface of another world. It is difficult to overstate what a transformation that represented, not only in our understanding of space, but in our dramatic new understanding of the earth. Perhaps the most influential of all the photographs that were taken from the moon was that of the earth. It was the first time that humans had truly seen their planet in its entirety. That point was well made by Mr Gray.

Perhaps less well recognised—although it was alluded to today—is the fact that Armstrong and

his crew were exposed to significant personal danger. As Willie Coffey mentioned, in the minute before the lunar module was due to land on the moon, Armstrong realised that its trajectory was such that it was heading for a rock. Not only did Armstrong safely take manual control, as we heard, but he skilfully balanced the need to use extra fuel to reach the ground against the need to conserve enough fuel in the tank to be able to take off again from the moon's surface. Having discovered that the ascent engine's ignition switch was broken, the astronauts improvised a fix using part of a ballpoint pen to activate the module's launch sequence.

All that ingenuity enabled them to return home—something that was, as Stewart Stevenson mentioned, by no means regarded as a foregone conclusion. Indeed, such was the doubt about whether the astronauts would get off the moon that President Nixon had two different speeches prepared to read out to the nation.

As Ms McAlpine reminded us, today's debate is an opportunity to celebrate Scotland's international standing in space research and satellite systems development. We have a national space technology centre, and Scottish Enterprise is working to develop a space innovation partnership to further promote excellence here. Scotland of course has long had a pioneering scientific research base, too, which is well illustrated by the recent work and achievements of Professor Higgs of the University of Edinburgh, whom I am pleased Elaine Murray mentioned. Having had a flash of inspiration in 1964 while he was out walking in the Cairngorms, he went on to propose the existence of a particle that is now called the Higgs boson. This summer, the European Organization for Nuclear Research—CERN—announced the discovery of supportive experimental evidence for the existence of the Higgs boson—a particle that is often referred to as the most sought-after particle in modern physics.

Earlier this month, the First Minister opened the new Scottish dark sky observatory near Dalmellington, within Galloway dark sky park, which is supported by the Scottish Government. As the only gold standard dark sky park to have an observatory, it will provide a good focal point for people to capitalise on the excellent star-gazing opportunities there.

Scotland's links to space travel continue. Following in Neil Armstrong's inspiring footsteps at NASA is space shuttle commander Bonnie Dunbar, whose grandparents were from Dundee and Banff. Dr Dunbar, I am pleased to say, took a saltire into space. She recently travelled back to Scotland by more conventional means to help to promote an event at Glenelg to celebrate the fact

that there is, as Mr McGrigor mentioned, now a Glenelg on Mars.

Advances in science and technology will continue to help to underpin not only our economy but our culture. We must continue to nurture them, both by attracting leading researchers from around the world and by ensuring that our young people have educations that can lead to similar pioneering careers in science and engineering here in Scotland.

Today, however, the Scottish Parliament is honoured, along with countless organisations and bodies around the world, to recognise the sheer scale of Neil Armstrong's "giant leap for mankind". Landing on the moon was the act of a truly pioneering spirit and a triumph for all who are able to use discovery and ingenuity to find practical solutions to unexpected problems. Those same qualities help people and nations to prosper, which is why Neil Armstrong's enduring contribution is his continuing ability to inspire young people to strive to be the very best that they can be.

13:15

Meeting suspended.

14:30

On resuming—

Scottish Civil Justice Council and Criminal Legal Assistance Bill: Stage 1

The Presiding Officer (Tricia Marwick): Good afternoon. The business this afternoon is a debate on motion S4M-04534, in the name of Kenny MacAskill, on the Scottish Civil Justice Council and Criminal Legal Assistance Bill.

The Cabinet Secretary for Justice (Kenny MacAskill): The bill implements two separate objectives that were identified as priorities under the Scottish Government's four-year making justice work programme: the creation of a Scottish civil justice council and the introduction of contributions in criminal legal aid from those who can afford them.

I am pleased that the Justice Committee has broadly welcomed the proposals for a Scottish civil justice council under part 1 of the bill and that there is almost unanimous support for the creation of the council. Its creation is a key recommendation of Lord Gill's landmark review of the Scottish civil courts because the council will be central to implementing many of the review's other recommendations and will become an agent of change, giving the civil justice system a far greater capacity to continue to improve.

As Lord Gill's review made clear, the civil justice system is very much in need of improvement and modernisation. That change is vital to ensure the quality of justice that individuals, families and businesses in Scotland expect and, more importantly, to which they are entitled. It is also vital to the Scottish economy, as effective and efficient resolution of disputes is good for business, helps to cut costs and helps to free up reserves that are tied up in litigation funds.

Therefore, I am committed to implementing a far-reaching programme of civil courts reform that is founded on Lord Gill's recommendations for change. It will be the most significant reform of Scotland's civil justice system in more than a century. We are well on our way: following constructive dialogue with justice stakeholders over the summer, we are now finalising a draft courts reform bill, which will be put out to public consultation in the coming months.

The changes on which we will consult will improve the judiciary's handling of cases and reduce delays to cases that are proceeding through the courts. Ultimately, they will ensure that the people of Scotland have access to a high-

quality system that secures just outcomes without unnecessary delay.

Making those changes will require a combination of primary legislation and procedural changes to court rules. Therefore, the council's immediate—and significant—task will be to help to deliver those reforms. Establishing the body now will speed up the pace of change by ensuring that the council is able to advance its work alongside the structural reforms rather than after them.

The council's work will not end when it has carried out that task. As I said, the council will also serve as an agent of change: it will be responsible for keeping the civil justice system under review. That will put an end to the piecemeal approach to reform that has contributed to the need for such fundamental change. It will also help to ensure that it is not another 100 years or more—or even 25 or 10 years—before the civil justice system catches up with society. The system will be capable of adjusting to change as and when it becomes necessary.

Some comments have been made on the composition of the council. I believe that the bill, with its provision for flexible appointments, strikes the right balance in allowing the council to take account of the range of interests in civil justice and to have the technical expertise for its detailed work without creating an unduly large and unwieldy body.

Jenny Marra (North East Scotland) (Lab): Does the cabinet secretary agree that, given the evidence that the Justice Committee heard, there might be scope to strengthen lay membership of the council? Although the ability to do that already exists, should the Government not look to ensure that more lay members are represented on it?

Kenny MacAskill: We are happy to enter into discussions with the Lord President on that. We must recognise that there is a balance to be struck. I understand that, even today, representations have been made by the Association of British Insurers and the Sheriffs Association. It is a question of getting the right balance.

The council will have statutory members, but the Lord President will have flexibility to take such matters into account. I am happy to reflect on the issue as the bill progresses through the Parliament and to enter into discussions with the Lord President. I give Ms Marra an assurance that it is the intention that as many lay members as possible will be brought on board, although, as in any organisation, there are limits.

Equally, it is clear that it is the Lord President's intention that matters will be dealt with in sub-committees, which will enable people who have particular expertise in a particular area to

contribute to the council's work without having to be on the general council.

I have reflected on the stage 1 evidence and the Justice Committee's remarks on those points, and I consider it appropriate to widen the provisions to allow lay members to be elected as deputy chair.

There has also been discussion about the most appropriate procedure for appointments. I believe that it is correct that the Lord President, who will have responsibility for oversight and direction of the body, should have a key role in determining its composition. I agree that the appointments process must be transparent and robust. It must also be proportionate. I consider that the bill, which contains a duty to publish a statement of appointment practice, provides for a fair, open and transparent process. Furthermore, the Lord President has stated to Parliament his intention to draw on the principles set by the Commission for Ethical Standards in Public Life in making appointments. I welcome that commitment.

On transparency, I hope that members will be pleased to note the intention to extend freedom of information coverage to the new council and to the Criminal Court Rules Council through subordinate legislation that is to be brought to Parliament in the new year.

When he opened the legal year in September, the Lord President said that the creation of the council under the bill signalled the first stage in a "remarkable enterprise in legislative reform".

Given the significance of the task ahead, many have emphasised the importance of getting the proposals for the council right from the outset. I believe that we have got them right, and I hope that the Parliament agrees.

I turn to part 2—

Margaret Mitchell (Central Scotland) (Con): I have a question before the cabinet secretary turns to part 2. As the council will be a statutory advisory body, will it have the right to be a statutory consultee in many different areas?

Kenny MacAskill: That is a matter that I am happy to clarify. My understanding is that, given the council's role, it will interact with me and the Justice Committee, but I will check that and get back to the member. We do not want the council to be stuck in splendid isolation. It will be a body that will oversee the rule changes that we seek to make. I will get back to the member on what is a technical but highly important matter.

Part 2 of the bill sets out proposals to introduce contributions to solicitors' fees in criminal legal aid. I am pleased that the Justice Committee and many in the justice system, including the Law Society of Scotland, support the principle that it is

right that those who can afford to pay towards the costs of their defence should do so. In a climate of financial constraint and pressure on public finances, that principle rings true. If we are to protect access to justice as much as possible—both in relation to civil and criminal cases—we must target legal assistance at those who need it most. Doing so is the only way to preserve the overall integrity of the legal aid scheme.

For those in the chamber who may be less familiar with the details of legal aid, I would like to make it clear that what the bill proposes is evolution, not revolution. Criminal legal aid has always been subject to a means test. People whose income and savings are above a certain level have been ineligible for legal aid unless they can prove undue hardship, and people who plead guilty to a criminal charge have been liable to pay a contribution to their costs if they can afford one, just as happens in civil legal aid.

The expansion of contributions will bring criminal legal aid into line with civil legal aid and correct a manifest injustice of the current system. How can it be right that a victim of domestic violence who must go to court to protect herself should be liable for a contribution to her civil legal aid, while the perpetrator, with substantially greater resources, could receive full criminal legal aid without a contribution?

Lewis Macdonald (North East Scotland) (Lab): Having said what he just said, will the cabinet secretary acknowledge that the position of the woman to whom he referred—the victim of domestic violence—will be unchanged by the bill?

Kenny MacAskill: Yes—absolutely. The bill's whole purpose is to preserve the system's integrity in tight financial times. We have no intention of going down the route that has been taken south of the border, where huge aspects of the law are no longer eligible for legal aid. To protect victims, whom I know everyone in Parliament wants to protect, we must make tough choices. In this world, perhaps those who can afford to make a contribution when they are charged with a criminal offence should do so.

I accept that the Justice Committee has asked important and valid questions about the detail of implementation. In particular, it asked whether the income thresholds are appropriate, whether collecting contributions will create difficulties for law firms, whether accused persons' human rights might be affected and whether there will be impacts on the administration of justice. I hope that I can reassure Parliament on each of those issues, which I have no doubt will be discussed in more detail at stage 2.

On the level of contributions, I will make three points clear. First, £68 a week is the threshold

below which contributions cannot be levied. The £68 figure can be amended upwards in regulations, but the bill specifies the starting point. The regulations will deal with such important matters and, accordingly, I have promised to provide draft regulations to Parliament before stage 2 begins.

Secondly, the £68 threshold is not gross income or even take-home income; it is the disposable income that a person has once a long list of costs has been deducted. On top of that, a contribution could be waived if undue hardship could be caused. The figure is the absolute level of weekly disposable income that will be protected under the scheme. Contributions will be assessed on the level of disposable income that is above £68 so, if someone has £69 in disposable income, their contribution will be based on the £1 that is over the benchmark and not on £69.

Margaret Mitchell: Will the cabinet secretary supply a definition of disposable income?

Kenny MacAskill: The definition of disposable income will be set down in regulations. It is currently dealt with under the civil legal aid scheme. It takes into account deductions for a spouse and children. Deductions will take place for welfare benefits that Capability Scotland has raised with us, which the Scottish Legal Aid Board will address.

I cannot provide the precise text that will be in the regulations, but the definition of disposable income will take into account deductions as it does under the civil legal aid scheme, which the criminal legal aid scheme will mirror. The definition will also take into account points that have correctly been made by people who represent those who have difficulties—which I appreciate—with mental health matters.

Finally on this issue, I point out that contribution levels will be graduated and will in many cases be small—the lower a person's income, the lower the contribution payable, in proportion to his or her income. That is fairer to applicants who have lower incomes.

I know that there are concerns about ensuring that people with disabilities are not adversely affected—not least because of the uncertainty about welfare reform. The Scottish Government and SLAB have listened to those concerns and have agreed that disability living allowance should be fully discounted from income calculations in assessing contributions. I will continue to engage with organisations such as Capability Scotland to ensure that no negative impacts occur.

I appreciate the anxiety that some criminal law firms feel about collecting summary fee contributions. Of course, collecting fees from clients is a routine part of business for most law

firms, so I suggest that the responsibility is not new.

We are trying to ease as far as is reasonable the burden of collection, while maintaining as generous a legal aid scheme as is possible. The bill therefore provides that the board will be responsible for collecting contributions for solemn cases. I am pleased that the Justice Committee has welcomed the proposal that summary contributions be treated as fees. That will assist firms' cash flows in a difficult financial climate. However, I will continue to consider further measures and enter into on-going discussions with the Law Society of Scotland.

It has been suggested that those who fail to pay their contribution may lose their representation, which could cause problems for them and the courts, but I do not believe that that is a serious risk. Most people will have no contribution. Most people who have a contribution will have only a small one, and most of them will pay it—evidence from England and Wales confirms that. There has been no increase in unrepresented litigants since the introduction of a contributions scheme there, and their scheme is less generous than our proposals.

I appreciate that we may need to put in place arrangements to ensure that the justice system is not affected when people refuse to pay. I am in no doubt that we can achieve that, and I will enter into discussion with the Law Society about it.

In conclusion, the bill will improve our civil justice system and help to maintain a fair, consistent and generous legal aid scheme.

I move,

That the Parliament agrees to the general principles of the Scottish Civil Justice Council and Criminal Legal Assistance Bill.

The Presiding Officer: We have a bit of time in hand, so if interventions are taken, the Presiding Officers will ensure that time is added to members' speeches.

I call on Christine Grahame to speak on behalf of the Justice Committee. Ms Grahame, you have around 10 minutes.

14:46

Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP): I thank the Presiding Officer for that. When I rise to speak, I am usually told that speeches are being kept short.

I welcome the opportunity to open the debate on behalf of the Justice Committee. I will try not to duplicate matters—I have used the word "matters";

I should say “issues”—that have been raised by the cabinet secretary, Kenny MacAskill.

I thank everyone who has given evidence on the bill—in shorthand, I refer members to the full list in annexes C and D of our report. I also thank yet again the members of the committee—the little darlings—for their diligence and good humour. In particular, I thank the inimitable David McLetchie, with his wicked wit. In quizzing the Lord President on his discretionary power to appoint six members of the council, he asked with an impish grin whether Lord Gill would comment on his “six-pack”. We should give Lord Gill his due: there was the merest flicker of a raised judicial eyebrow before he answered.

Like previous justice legislation, the bill has two main parts—as members know, such bills are quite my favourite. As the cabinet secretary said, part 1 will establish the Scottish civil justice council and part 2 will introduce contributions to criminal legal aid. I will cover each part in turn.

Part 1 received less media attention than part 2, but it nonetheless deals with a crucial issue. As the cabinet secretary said, it stems from the 2009 review of the civil courts by Lord Gill, who is now Lord President. That review proposed a package of structural and functional reforms.

The proposed creation of the council has received widespread support. Many believe that it is an important step in ensuring the effective operation and oversight of the Scottish civil justice system. However, the committee heard a number of concerns relating to the provisions, which included concerns about the council’s status. Some witnesses believed that it should be a non-departmental public body. There were concerns about whether the council’s functions and powers are appropriate—for example, should it prioritise updating rules versus advising on policy—and about the balance therein. There were also concerns about who would chair the council and how sub-committees might best be utilised. The committee is satisfied by the explanations and assurances that it received from the Lord President and the cabinet secretary on all those issues.

Perhaps the main concern that witnesses highlighted related to the composition of the council and the Lord President’s appointment process—the “six-pack” process. In particular, evidence centred on the balance of legal versus lay representatives. My colleague Jenny Marra raised that issue. To reflect specialist areas of law, some legal bodies suggested that there should be more solicitors on the council; I vote for that—okay, I do not really. Others, including consumer groups, believed that there should be a more even split between legal and lay members so that the views of users of the civil courts rather than those

of just the practitioners would be taken into account. The committee shares concerns that the perspective of end users may not be fully represented on the council, but we expect that, once a new set of court rules is drafted, the balance of membership will shift over time. The committee notes that the Scottish Government will have powers to adjust the council’s mandatory membership if required.

Rules may seem to be dry as dust, but they are important in the processing of justice. They ensure that deadlines are met so that we do not have a Dickensian pace in our civil justice system. They require fair notice of the case pled and defended, for example. By their nature, they often require to be technical and specialised, but so is a mechanic’s toolbox. For me, they are simply the toolbox of the civil justice system. However, rules must keep pace with modern requirements and with technology. They must make allowances for the party litigant, accelerated court process, abuse of process, tardiness and so on. I speak from weary experience, having had to know court rules.

The committee welcomes the Lord President’s assurance that he will draft a statement of appointment practice based on the principles set out by the office of the Public Appointments Commissioner for Scotland. In any event, we have asked the Scottish Government to consider whether that might be put in the bill.

I turn to part 2, which is on criminal legal assistance.

Jenny Marra: Does the convener of the Justice Committee agree that the bill needs to be tightened up in part 1 on the policy element, so that the policy powers of the new council do not creep into the elected jurisdiction of this Parliament?

Christine Grahame: Unfortunately for me, I am not allowed to agree or disagree in this debate because I am speaking as convener. I have to represent all and sundry—I am sundry at the moment. I will be free on another occasion to take a view.

The principle of making contributions is already established in some forms of legal assistance such as civil legal aid. However, with regard to criminal legal aid, the vast majority of accused persons—as the cabinet secretary quite rightly said—do not pay anything for their legal representation and associated costs. Now we are introducing contributions to criminal legal aid for the first time. The Justice Committee found seven distinct areas of concern about that part of the bill.

One concern was whether it was right in principle to require contributions for criminal legal aid. It could be argued that there is a clear distinction between the civil litigant—at least the

pursuer, who has the option of whether to raise proceedings—and a defender in a criminal trial who has no option. On balance, the committee was not opposed in principle to recipients of criminal legal aid making a contribution towards its cost; there is more to say about that later. However, any contributions must be proportionate to the means of the accused and must be sufficiently flexible to take into account particular personal circumstances. That raised the issue—I think that Jenny Marra raised this as well—of whether the financial circumstances of the spouse or partner should be taken into account. Frankly, I do not have an easy answer. Perhaps that should be decided on a case-by-case basis—I am sure that we will examine that later.

Another concern was whether fairness required that there should be provision to enable refunds of legal aid contributions to be made in certain circumstances on acquittal. The committee had some sympathy with the argument that acquitted persons should be refunded their costs, so it asked the Scottish Government to consider further the issue of recovery of contributions—perhaps restricting that to a narrow range of cases, perhaps under judicial direction where the bench indicates that the case should never have been brought by the Crown in the first place. However, we would then have to consider an award of expenses against the Crown. Again, complications would arise if the defence were privately funded and there were a big Queen's counsel bill to be met, but the complications are not insurmountable and the issue is worth debating.

We wondered whether the level of contributions that is being proposed is appropriate. A number of witnesses had concerns that the threshold had been set too low and that very poor and vulnerable people might be asked to make contributions. The cabinet secretary has indicated that he will bring draft regulations to the committee before we move to stage 2; that is useful. However, we were disappointed—rap over the knuckles here—that the equality impact assessment was not forthcoming during our deliberations. It was forthcoming later, but we did not have it at the time. It is not good enough that the committee is left to deal with things when all the evidence, such as the assessment, is not available.

We were concerned about whether it was right that solicitors rather than SLAB would collect summary criminal legal aid contributions. Representatives of the solicitors' profession of course strongly objected to what they saw as an additional burden of collection being forced upon them and the committee asked the Government to reflect upon those concerns.

There was also the argument, which has some traction, that the relationship between agent and

client might be compromised. Would it even lead to a change in plea? Would an accused who was unwilling to pay contributions simply plead? If the case was lost, how would the agent ever recover contributions? Who would pay him or her if they lost the case? Who would stump up if the accused was in prison? Why will SLAB not collect the contributions as it does for civil legal aid—is it so that solicitors will carry the loss? That is a fair point to make. If that was the case, would that mean that agents simply would not take cases because they would not want to carry losses?

The committee wants to know whether the proposed changes would affect the smooth running of the criminal justice system. For example, if someone has their legal aid suspended in the middle of a trial, what happens to the trial? What happens if there is a co-accused, and they are left hanging out to dry, waiting for someone to come in to represent them—[*Interruption.*]

I beg your pardon, Presiding Officer—I have just knocked over my glass after too much flamboyance.

There are issues around the suspension of legal aid that do not arise in civil cases where someone's liberty is not at risk. [*Interruption.*]

What has happened? Have I given somebody an early bath?

The Presiding Officer: Jim Eadie is moving out of danger's way. Carry on, Ms Grahame.

Christine Grahame: In order to do that he would have to leave the chamber entirely, as I see that he is doing.

The committee considers that it is crucial that any savings that are made are not in effect cancelled out as a result of the changes having unintended consequences. That is a mantra in law: watch out for those unintended consequences coming down the track. The committee has therefore called for the changes to be effectively monitored and for ministers to report to Parliament three years after the proposals come into effect.

Human rights is a huge issue, and the committee sought evidence on whether the Government's proposals would comply with the European convention on human rights. Our concerns centred on whether an accused would be left without legal representation during a trial—as members have highlighted—and whether financial contributions were appropriate and equitable. Indeed, it was clear that, even if the office of the public defender stepped in, it would still be required to get those contributions, so that issue has not been solved.

I will conclude before I scatter any more fluid around the chamber. The committee supports the

general principles of the bill, but we urge the Scottish Government to consider carefully our recommendations, particularly on part 2. In that regard, I note the Scottish Government's response to our report and the cabinet secretary's comments this afternoon.

The bill is the committee's fourth, and I think that we have become a well-honed team in comprehending and scrutinising complex legislation. *[Interruption.]* I welcome Mr Eadie back to his seat—I promise that he will have a dry few minutes.

I hope that the committee's stage 1 report provides some assistance to members, and I look forward to hearing other contributions to the debate. I am very glad to sit down.

The Presiding Officer: I now call an accident-free Lewis Macdonald.

14:57

Lewis Macdonald (North East Scotland) (Lab): I hope that you are right, Presiding Officer.

Another parliamentary year, another two-part justice bill that is making two quite unrelated changes to Scotland's legal system in a single piece of legislation. As if the Criminal Cases (Punishment and Review) (Scotland) Bill was not enough of a stitch-together or enough of a mouthful, along comes the Scottish Civil Justice Council and Criminal Legal Assistance (Scotland) Bill to trump it, both in the length of its title and in the absence of a common theme underpinning the two important things that it is trying to do.

The Criminal Cases (Punishment and Review) (Scotland) Bill was at least focused entirely on criminal justice, albeit in two quite different respects. The bill that is before us, however, combines a change to the oversight of civil justice with a change to the basis of legal aid in the criminal courts. That is why the bill is already being debated almost as if it were two separate pieces of legislation, although Parliament will vote on a single proposition at the end of the day.

The proposal in part 1 to create a Scottish civil justice council has been broadly welcomed, but it has—as we have heard—prompted some important debate. The fundamental question is whether the measure should simply bring existing procedures for civil courts up to date, or whether it should seek to move the oversight of civil justice on to a different level.

The existing rules councils for sheriff courts and the Court of Session focus on drafting and updating court rules or procedures. They are dominated by sheriffs, judges and lawyers, and effectively operate as in-house committees for the legal profession. The bill proposes to create a new

civil justice council that will be involved in oversight of the system as a whole, which will include—as Jenny Marra highlighted—making an input to civil justice policy. The question is whether the way in which the council will be constituted is fully in line with its extended role and responsibilities.

There is general support for measures to cut out unnecessary duplication and harmonise court rules, and for creating a new organisation that can seek to represent the wider community, rather than judges and lawyers alone. There is some concern, however, that the bill has not gone far enough to achieve that objective. As it stands, only two out of 20 council members must be lay members representing consumers, compared with nine judges and lawyers and three public officials. The remaining six places on the council are to be filled at the discretion of the Lord President, who could choose to fill some or all of the places with people who are not lawyers or judges. However, he does not have to do so, with or without discussion with ministers, which is what Kenny MacAskill offered. It would equally be open to Parliament to choose to legislate on who else should be represented on the civil justice council—for example, trade unions or the insurance industry, both of which are represented on equivalent bodies in other jurisdictions.

Alan Rogerson said, with reference to having others represented in addition to those who earn their livings in the courts:

"If we are going to reform the civil justice system, we need people who have experience of what happens before the court system takes over".—[Official Report, Justice Committee, 26 June 2012 (am); c 1551.]

Annabelle Ewing (Mid Scotland and Fife) (SNP): My understanding is that a lot of the detail will be addressed in specialist committees, which is where the really important stuff will take place. I would have thought that that would afford a considerable opportunity for all interested parties to have their contribution made and heard.

Lewis Macdonald: That echoes a point that Kenny MacAskill made. I do not disagree with that point, but I think that the oversight line of the council ought also to reflect a proper balance between legal and lay representation. There is an opportunity for Parliament to make that decision rather than leave it to the discretion of, or the choices made by, the Lord President or by him in consultation with the Government.

The organisation Friends of the Earth, whose primary interest here is in the bill's impact on environmental law, is concerned to ensure that

"membership of the council should not be dominated by judicial and legal practitioners",

in order to provide a balance. Citizens Advice Scotland is keen to see a “balance from the start” between lawyers and lay members rather than rely on the Lord President’s discretion to increase the number of lay members eventually, after an initial period of rules division dominated by members of the legal profession. Clearly, this is an area in which the bill might be strengthened by amendment, to which issue we will no doubt return.

Another aspect of part 1 that was highlighted in committee was the relationship between the civil justice council and ministers on policy matters, which Jenny Marra has mentioned. Professor Tom Mullen of the University of Glasgow described the bill as drafted as “confusing” in that regard and suggested that it might be

“appropriate to include a provision that ministers could invite the council to look at a particular matter, and the council would then have a duty to do so.—[*Official Report, Justice Committee*, 26 June 2012 (am); c 1558.]

That seems reasonable if the civil justice council is to go beyond the narrow area of court procedures. Again, we may return to that issue in due course.

The issues in part 2 are perhaps more fundamental—they are certainly more contentious—although, again, we have no difficulty with the bill’s general principles in that regard. Indeed, during the Labour debate on Scotland’s future earlier this month, I was happy to quote from the cabinet secretary’s defence of part 2, which was in similar terms to those that he used today. He told the Justice Committee that

“it is right that those who can afford to pay towards the cost of their defence should do so ... That must be right when public finances are under such pressure.”

He promised to target help

“at those who need it most”.—[*Official Report, Justice Committee*, 18 September 2012; c 1717.]

I could not agree more, and not just on the matter of legal aid. However, the question with any targeted benefits is how to ensure that support goes to those who need it most.

Article 6 of the ECHR guarantees the right to a fair trial, including the right of anyone who is charged with a criminal offence

“to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require.”

That is not an unlimited right. The issues for any justice system in interpreting that are to determine when a person lacks sufficient means to pay for legal assistance and when the interests of justice require that that assistance be given free.

The proposal in the bill to introduce a means test for those elements of legal aid currently with

no client contribution and to introduce a single assessment for all types of criminal legal aid have been broadly welcomed, but some of the details of the proposals have caused concern. First, there is the level of disposable income at which contributions will be required. Kenny MacAskill mentioned that up front in his opening speech. I am glad that ministers have dropped plans to count disability living allowance and personal independence payments as part of disposable income. However, many remain concerned about access to justice for poorer people in general.

The Law Society, for example, believes:

“It is not realistic to expect anybody who has a disposable income of only £68 per week or a disposable capital of only £750 to be required to pay towards their legal costs.”

Professor Alan Miller of the Scottish Human Rights Commission told the Justice Committee that he was

“not at all convinced that a sufficient assessment has been done of the impact of the bill on vulnerable individuals who come into contact with the criminal justice system and are unable to pay for proper legal representation.”—[*Official Report, Justice Committee*, 11 September 2012; c 1692.]

That impact might be to create a perverse incentive for accused people to plead guilty to offences that they did not commit or to go to trial without legal representation rather than take on legal aid contributions that they could not afford.

The Government’s response—Mr MacAskill said it again today—has been that the means test that is being introduced for criminal legal aid is the same as already exists for civil legal aid. That begs the question whether the thresholds might disadvantage those on low incomes who seek access to civil justice, such as the victim of domestic abuse to whom the cabinet secretary referred. I would be interested to know when the thresholds for civil legal assistance were last properly reviewed. I note that the level at which the threshold is set was not uprated this year in the way that it has been uprated in past years.

A second area of concern is the lack of a proposal to refund financial contributions in the event of an acquittal. Again, the Government’s reasoning is that accused persons who pay their own costs do not get a refund if they are acquitted, so there is no reason to allow refunds to those on legal aid. That defence again raises questions, such as why those who are cleared of a crime have to pay to prove their innocence whatever their income. In that regard, Dr Cyrus Tata of the University of Strathclyde observed that the cabinet secretary seemed to be arguing that

“two wrongs make a right”.

Thirdly—Christine Grahame mentioned this in the concluding part of her speech—there is

concern about the proposal that solicitors should be responsible for collecting contributions from those who receive legal aid in summary cases given that collection is already done in civil cases and will be done in solemn cases by the Scottish Legal Aid Board. As the convener of the Justice Committee said, that responsibility will be unwelcome to solicitors, particularly to smaller firms, but it might also have implications for clients. Country lawyers might well decide that the costs and inconvenience of collecting contributions are not worth the effort, in which case their area could be left without a solicitor who is prepared to take on criminal cases. That would reduce access to justice at the very time when many rural areas are facing the threat of closure of their local court.

As Christine Grahame said, unintended consequences might arise from a number of provisions in the bill, so they must be considered carefully at the next stage of proceedings. It is on that basis that we in this part of the chamber will support the general principles of the bill.

15:07

David McLetchie (Lothian) (Con): I am pleased to be able to speak in today's stage 1 debate on the Scottish Civil Justice Council and Criminal Legal Assistance Bill.

Once again, the Parliament and the Justice Committee are considering a piece of legislation with two very different parts. Part 1 seeks to establish the Scottish civil justice council to reform the civil justice rules and keep the system under review. Part 2 deals with the entirely different matter of criminal legal aid and seeks to introduce a system of contributions for criminal legal assistance.

The fact that the bill deals with two distinct and unconnected areas of law is worth noting. While such an approach is not without precedent and can be justified on pragmatic grounds, it has potential to create handling difficulties when we consider legislation. Combining different provisions in one bill also makes finding the law on a specific matter more difficult and it is therefore not to be encouraged. I note that the Scottish Government is increasingly taking that approach and I urge caution against its becoming the norm for those very reasons.

Part 1 of the bill, which is less contentious, implements the key recommendation of the Scottish civil courts review, which was carried out by Lord Gill in 2009. It will replace the Sheriff Court Rules Council and the Court of Session Rules Council with a single body. Significantly, the new council will have a role

“to keep the civil justice system under review”,

which will place the organisation as one of the key players in law reform in Scotland.

That point has caused some stakeholders to question whether the bill will make an organisation that will have a significant advisory role sufficiently accountable. Unlike other organisations such as the Scottish Law Commission, the council will be designated a statutory advisory body, rather than a non-departmental public body. The Scottish Government has argued that the council's main role will be to assist the Lord President, who will therefore have ultimate responsibility for court procedure, and that it would therefore not be appropriate to designate the council as an NDPB. However, that will have the effect that the council will be free from the accountability mechanisms and public appointment procedures that would apply to an NDPB. That is despite the fact that, according to Professor Paterson, who represented public law professors in Scotland, the council will be

“an NDPB in all but name”.—[*Official Report, Justice Committee*, 26 June 2012 (am); c 1553.]

It may be appropriate therefore that the bill, if it does not designate the council as an NDPB, introduces an explicit recognition that the council must be accountable in its policy role.

Other witnesses sought reassurances as to where the boundaries of policy lay. As the bill progresses, I consider it a priority to examine whether the relevant provisions need to be tightened up to ensure that the council's policy functions are not too wide.

The council's membership has also attracted some criticism from a number of stakeholders, who are calling for greater representation of their interests. The council will have between 14 and 20 members and it is correct that its membership will be limited to a manageable size in respect of legal and lay representatives. However, I question whether it is right that only two solicitors will sit on the council when currently five solicitors sit on each of the two rules councils.

It seems that there are two main concerns over part 2 of the bill: that the thresholds at which contributions are to be made are set too low; and that it will result in innocent people being out of pocket as a result of actions of the state.

The bill proposes that if an individual has a weekly disposable income of £68 or more they will have to contribute towards their legal representation. Organisations such as the Law Society of Scotland, the Scottish Human Rights Commission and Capability Scotland all told the committee that that proposal may result in poor and vulnerable individuals being asked to make contributions. There are legitimate concerns

surrounding access to justice for society's most vulnerable and poor people.

The committee heard an argument from the Faculty of Advocates and Dr Cyrus Tata of the University of Strathclyde that contributions should be introduced for criminal proceedings only if they are accompanied by refunds on acquittal. The argument for that position is convincing and is based on the idea that if the state takes an innocent person to court, that person should be left in no worse position than he or she was prior to the proceedings commencing. The Government's reason for rejecting such refunds is that that would treat all legal aid recipients more favourably than those who were privately funded. The committee is correct to call on the Government to consider further its position on the matter.

I question whether it is appropriate for solicitors to take on responsibility for collecting any summary criminal legal aid contributions that are due. The Scottish Legal Aid Board will continue to administer the fund for solemn legal aid and in relation to most appeals. I fail to see why the Legal Aid Board, which is the very body tasked with administering legal assistance, cannot collect all contributions. Requiring solicitors to collect contributions will require them to carry out unpaid work and may lead them to seek adjournments because contributions have not been paid. The committee correctly argues that SLAB is better placed to maintain and enforce collection mechanisms, and I urge the Government to consider that.

The Scottish Conservatives will support the bill at stage 1, notwithstanding our call for greater thought from the Government in relation to part 2. I hope that the cabinet secretary will heed the concerns of others in that respect.

15:14

Roderick Campbell (North East Fife) (SNP): I refer members to my entry in the register of members' interests as a member of the Faculty of Advocates.

As we know, the bill is in two parts. It is fair to say that one of the points of contention about part 1 was that, given the bill's provisions on mandatory appointments such as those relating to the Law Society, the judiciary and the Faculty of Advocates, the council runs the risk of being lawyer-heavy with insufficient attention being paid to the interests of the users of the court as well as the wider public interest—and more so if the designated up to six Lord President appointees also include lawyers. There is an issue there. However, although an organisation such as the Forum of Insurance Claims Managers rightly

refers to its 80 per cent interest in litigated cases, we need to recognise that, as the Lord President suggested, much of the council's work at the start will involve drafting rules. Indeed, he described that as "a substantial project".

Nevertheless, as the Lord President and the cabinet secretary—and, indeed, the academics Professors Mullen and Paterson—recognise, sub-committees will be very important. If they are set up from the start, they will be able to break down the work and it will be much easier to ensure that wider interests are represented in the Lord President's appointments. We should also bear in mind that it will be possible for the Scottish Government to use secondary legislation to adjust the council's mandatory membership and perhaps to reduce the number of lawyers in due course. The Lord President was also right to stress in his written evidence the fact that there was much talk of the experience in England and Wales, where the Spencer review led to a rebalancing of the membership of the Civil Justice Council to half legal and half lay members, without any recognition that rule-making functions in England and Wales belonged to a separate body.

Nevertheless, I hope that the Lord President recognises in his appointments the importance of the interests of the insurance sector and indeed the trade unions. I have every hope that in time the new council will have a greater focus on policy matters, not to usurp democratic input but, as the Lord President himself put it, to frame

"the sort of system we want to have, how we want it to work and whose interests we want to protect",—[*Official Report, Justice Committee*, 4 September 2012; c 1610.]

taking its lead from Parliament on matters such as court structures or civil remedies.

As for part 2, I, like others, have no problem with the proposition that those who can afford to do so should contribute towards their criminal legal aid. At a time of real strain on the public purse, such an approach has to be right. However, as the Scottish Human Rights Commission suggests, contributions should not be pitched at a level that would impact on an accused person's right to a fair trial.

As far as levels of contribution are concerned, I welcome not only the cabinet secretary's commitment to regularly reviewing the human rights impacts of part 2 but the agreement reached with Capability Scotland and SLAB to exclude disability living allowance and its successor from assessments of disposable income.

Not unexpectedly, there was considerable opposition from solicitors to the suggestion that they collect criminal legal aid contributions in summary cases. SLAB estimates that collecting those contributions would cost it £600,000 and, of

course, solicitors fear substantial levels of non-payment. Attempts to draw on present experience from the history of collection in assistance by way of representation cases where guilty pleas were entered did not take matters forward greatly.

Mark Harrower of the Edinburgh Bar Association said that his firm made no attempt to collect contributions and, unsurprisingly, SLAB did not have any information on non-collection. However, it advised that in 2011-12 solicitors would have been required to collect £154,000 for criminal ABWOR cases. That is a relatively small figure, but I note from the bill's financial memorandum that the average contribution payable under ABWOR under the new arrangements is estimated to be £143 from income and £187 from capital as opposed to the current maximum contribution of £142. It is important to remember that in summary cases 44 per cent of those making a contribution will pay below the current ABWOR maximum contribution of £142.

I know that many people in the legal profession believe the proposals to be a pay cut by another name and there is clearly a risk that delays associated with collection of contributions will impact on the administration of justice, even though they clearly should not. Nevertheless, we are in difficult financial times and I welcome the Scottish Government's commitment to reporting back to Parliament on the impact of the proposals in due course.

In relation to the reimbursement of legal expenses, Scotland has, as the cabinet secretary has pointed out, no tradition of reimbursing the legal expenses of acquitted defendants. It is suggested that to reimburse the contributions of legally aided defendants who are acquitted would potentially advantage them at the expense of privately funded individuals.

James Wolffe QC, speaking for the Faculty of Advocates criminal bar association, believes that no one, whether paying privately or not, should be denied a refund of contributions, although he had no information to indicate how many privately funded people have been acquitted. There is clearly little evidence on the point.

In England and Wales, reimbursement started out as being for exceptional cases only. Since 1985, following the creation of the Crown Prosecution Service, reimbursement from central funds has been much broader and applies to all defendants; of course, there is provision for defendants to be asked to contribute towards costs, which is not part of our system. In his evidence, the cabinet secretary described the issue of reimbursement of legal expenses as "fraught".

In its response to the committee, the Scottish Government has indicated that it is not persuaded that it would be right to make provision for the recovery of contributions on acquittal either as a general rule or in some cases.

I accept that the bill deals with criminal legal aid only and not with the wider issue of the recovery of legal expenses, but I hope that the wider issue merits being kept on the radar for the future. At a time of radical change in the criminal justice system, that seems not unreasonable.

15:21

Graeme Pearson (South Scotland) (Lab): The development of a Scottish civil justice council comes at the end of a long process of consultations, reviews and reports.

Not only will the creation of the council implement the reforms identified by Lord Gill but, as the Lord President acknowledges, properly constituted and directed, the council should deliver on-going modernisation, deal with matters affecting the administration of justice in our civil courts and create the necessary rules. As the cabinet secretary said in his opening speech, the council should be an agent for change. The Parliament hopes that it will take that responsibility seriously.

With a limit of no more than 20, the council's membership reflects a significant presence of legal professionals: judges, solicitors and advocates. There are to be at least two representatives from the consumer protection community and, in evidence to the committee, the Lord President provided significant assurances that he will seek an appropriate balance on the council to ensure that all those who access civil justice across Scotland have their views considered and properly weighed.

As other speakers have said, the Lord President has access to six personal nominations. We hope that he will use those wisely. The Lord President carries a heavy burden in that regard, although I feel confident that the current Lord President is a match for that duty and, with Government support, will be able to deliver on what is a radical change for Scotland's justice system. The precedents created now set the tone for future changes for civil justice in Scotland.

We are advised that the additional costs involved in the creation of the civil justice council are to be borne by the Scottish Court Service and paid for from fees that are paid into the system in relation to access to civil justice. That outcome is to be welcomed in these days of economic stress.

Part 2 of the bill revisits the provision of legal aid in the context of criminal justice.

Under current provisions, persons subject to the criminal process who get assistance by way of representation can, in appropriate circumstances, expect to contribute between £7 and £142 towards the cost of their legal representation. The bill proposes that such a citizen who has a disposable income in excess of £68 a week may be asked to contribute between £5 and £1,518 towards the cost of their legal representation. Such rules apply not only to indigenous Scots but to any person in Scotland from the European Union and, I imagine, from elsewhere in the world.

Although I welcome an approach that ensures that those who can pay do pay, I want to ensure that, in circumstances in which an accused person attracts prosecution, we will be able to apply rules in deciding ability to pay—rules that are efficient in their application and catch those who seek to hide their true wealth. At the same time, the rules need to protect those who are genuinely unable to finance proper legal representation.

Annabelle Ewing: Speaking as a lawyer, I make the point that lawyers already have to collect contributions for civil legal advice and assistance and, indeed, ABWOR. It is not a new thing. It really is incumbent on the lawyer to run the practice and get the money in, and it is not, therefore, unreasonable, if we are aligning civil and criminal legal aid systems, that that approach is adopted—and it has to be said that it is being adopted with respect only to summary criminal cases.

Graeme Pearson: I am obliged to the member for that point. Indeed, in evidence to the Justice Committee, many solicitors acknowledged that they had found that their ability to obtain fees in circumstances that they outlined had been severely stunted. The chaotic approach of some clients left solicitors in a position of investing in future service provision, taking the loss on the chin as a result. In terms of the future provision of services, the proposal in the bill seems a precarious way forward.

The provision of public defenders to fill the gap in circumstances in which solicitors feel unable to represent clients is a proposal that seems—on the basis of the available evidence—to be poorly thought out and lacking in true substance. I hope that that element will be further considered and fleshed out.

The Scottish Government must revisit those elements to assess the options that are available to it before taking matters further. The reluctance of SLAB to play a part in this part of the recovery of fees speaks volumes.

The knock-on effect arising from a client's failure to pay the element of the fee due to their solicitor—perhaps leading on occasion to the

withdrawal of services before or during a trial—was discussed in evidence that was given to the Justice Committee, and we heard that that could cause significant disruption with regard to the way in which trials are administered. The cabinet secretary would do well to consider that issue, which deserves further consideration.

I have sympathy with the view that judges should have the power to order the reimbursement of costs to an accused who is subsequently acquitted and discharged, in very specific circumstances.

The broad thrust of the bill's intentions in part 1 and part 2 is to be welcomed. However, as always, the devil is in the detail.

15:29

Colin Keir (Edinburgh Western) (SNP): It has been fascinating to be a member of the Justice Committee, which, over the past few months, has listened to organisations and individuals—many of them distinguished—from within the legal profession. It is clear that managed change is required over the next few months simply because of the pressure on public finances. Every public and Government department has to manage its budget in the most efficient way, and justice can be no different. We must, however, maintain a quality of service that is fair to those who are involved in the system.

On the first part of the bill, the Lord President made a compelling case for reform. Although no witnesses were against the principle of the new council, there were some concerns about its make-up, as many members have said. I am happy with the number of council members being between 14 and 20, as anything larger could become overly bureaucratic. However, that is where some of the witness disagreements begin. Who should have a place on the council? Is the legal profession overrepresented? What about more laypeople being involved? There are also questions relating to the powers and role of the Lord President.

For those of us who are not legally qualified, the modernising and maintaining of court rules were probably not major issues when the bill was introduced. However, one witness had the foresight to bring along copies of the rules for both civil and criminal courts, and both sets of rules appeared to be between 6 and 8 inches deep. That may seem a minor point of showmanship, but given the complex, technical nature of the rules and the need for modernisation I believe that there must be—as the Lord President suggested—a very strong presence of legally qualified members, especially in the new council's formative years.

Of course, the new council must also have lay members. We received strong representation on that from Scottish Women's Aid and the Association of British Insurers.

Jenny Marra: Does the member agree that the lay members could also be qualified legally?

Colin Keir: Yes, of course. I have no objection to that at all. Over the years, I expect the composition of the council to change, especially after the court rules have been modernised, and more lay members will be involved—whether or not they are legally qualified. Some of the technical work can be done by committees set up by the council, which should help to speed up the process of court rule change. I am pleased that the Scottish Government will remove the requirement in section 11(4) that the deputy chair must be elected from the judicial members of the council, thus opening up the possibility of a layperson taking up the position.

Some witnesses thought that too much power is being given to the Lord President, particularly in respect of appointments. In the early stages, I had my concerns about that as well. However, having heard the evidence I am now convinced that the office of the Lord President is the correct avenue to travel. With the council being required to lay an annual report and business plan before Parliament, and with the Lord President publishing a statement of appointments practice, I believe that the checks and balances exist to allay fears.

Another problem to be faced is that of administrative justice. Like my colleagues on the Justice Committee, I see the future as being uncertain and will be interested to see what is proposed in the coming months.

I suspect that the second part of the bill will be regarded as the most contentious part. The cost of legal aid has risen over the past number of years and, like my colleagues on the Justice Committee, I am not opposed to the principle of the recipients of criminal legal aid making a contribution towards its cost. In the words of the convener of the Justice Committee, the system must be proportionate to the means of the individual and must be sufficiently flexible to take into account individual personal circumstances. That is particularly important for those on benefits, who may not be in a position to pay anything towards the costs. I am delighted that the Government has agreed with Capability Scotland and the Scottish Legal Aid Board that any payment of disability allowance or its successor, the personal independence allowance, should be disregarded in any assessment of the applicant's disposable income.

As we have heard during the debate, there are concerns about the level of disposable income—which has been set at £68—at which a

contribution would have to be paid. I am glad that the Scottish Government has clarified that that figure is a starting point and can be amended upwards in regulations. I am also happy that it will be kept under constant review. The fact that the Scottish Government has agreed that income and capital thresholds must be kept under review—and regular review at that—makes me feel a good deal easier about those within the system who have little in the way of personal funds.

Among other aspects of the bill that are worth highlighting is, as others have already pointed out, the effect of contributions being collected by solicitors rather than that job being given to the Scottish Legal Aid Board. However, I will leave those matters for another day.

15:35

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): Once again, I am—I think—the first member to speak who is not a member of the Justice Committee. Let me begin by commending the Justice Committee for another excellent report. I always find that I am, if I have read the committee's reports and oral evidence, absolutely prepared for the debate. That was perhaps rather a rash thing to say, but time will tell.

On part 1 of the bill, which provides for the civil justice council, I think that the main areas of concern are about who is to be on the body, how it is to be appointed, and how someone might be dismissed from it in the rare event that that is required. It seems to me to be of central importance that the opinions and needs of users and consumers must be adequately reflected in the make-up of the body. As Lewis Macdonald reminded us, what is currently written in the bill could mean that the civil justice council has as few as two non-legal members. When Jenny Marra raised that point in an intervention, the cabinet secretary said that he would discuss the issue with the Lord President. However, I think that we—and the bill—must take a view on the issue.

The same issue arises in the appointments procedure. It is not good enough to refer to the Lord President's assurances, as I think the cabinet secretary did in relation both to this matter and to policy. The fact is that Lord Gill will not be Lord President forever and, as always, it is the words in the bill that matter. I think that there ought to be something about the appointments principles on the face of the bill.

The cabinet secretary also highlighted the policy role of the council when he referred to its keeping the civil justice system under review. As David McLetchie rightly said, those policy responsibilities must not be too wide and, as Jenny Marra said, they must be tightened up. Clearly, this is an area

that needs to be looked at during stage 2. Perhaps in order to emphasise the centrality of ministers and Parliament in matters of policy, there could be an amendment that would place a duty on the council to provide advice to ministers on policy. I have a general concern that too many of the decisions are being left to whoever happens to be Lord President at the time. At the end of the day, ministers and Parliament must have an important role in all this.

Finally on part 1, I note the concerns of Scottish Women's Aid about the wording on alternative dispute resolution at section 2(3). Scottish Women's Aid made the important point that alternative dispute resolution must not be assumed to be required in all cases because, clearly, it is not appropriate in domestic abuse cases.

That point provides me with a bridge to part 2 of the bill, on which I was also struck by what Scottish Women's Aid said—the example was also quoted by the cabinet secretary—about the apparent injustice in domestic abuse situations in which a woman might have to pay for civil legal aid while the violent man does not. All I say in response to that—which the cabinet secretary made central to his argument—is that it is dangerous to base a whole case on one example. For a long time, I have argued that women should not have to pay the money that they currently pay in order to get injunctions and so on. My preference would be that no contributions at all be required in domestic abuse cases in the civil courts.

Domestic abuse apart, I think that the criminal situation is different from the civil situation, because the power of the state is against the person involved, who has no choice and may be innocent. There are also ECHR implications concerning the right to representation. I note that Professor Alan Miller said that there had been no proper human rights consideration by the Government in relation to its proposals in the bill.

I certainly accept the principle of a contribution to criminal defence when the person can afford it—that principle is already enshrined in the current system. However, I have serious concerns about the level of unassessable disposable income being set at the first £68—an amount that has obviously been picked to mirror the limit for civil legal aid. We should reflect on the fact that that system was set up in the Legal Aid (Scotland) Act 1986. In 1986, the amount was £49, so we ought to reflect that the amount has clearly not kept pace with inflation when it comes to civil aid. I understand the financial difficulties so, domestic abuse apart, I am not arguing for changes to the civil legal aid system, but I am arguing that £68 is a pretty low sum in relation to what was originally

proposed for civil legal aid in 1986. I therefore hope that that figure will be looked at again.

Two other changes are needed, which are especially required if the £68 figure is to be kept. First, the Scottish Legal Aid Board should collect the money. It has a 95 per cent collection rate for civil legal aid—which has the disposable income threshold of £68—so it is clearly quite good at it. It has systems in place, so it seems obvious that it ought to do that. The danger is, of course, that if the board does not collect the money, people may end up being not represented in court, which is a serious matter.

Secondly, I want refunds for people who are acquitted in court. I know that the argument against that relates to people who privately fund their cases, and that it would be expensive to refund some people who get expensive advocates. Therefore, it would be perfectly equitable to refund only those who are in receipt of legal aid. That is a form of means testing; those who do not receive legal aid can afford the payments far better than can those who are in receipt of legal aid. I understand that it would not be financially possible to refund everyone who was acquitted, but if the new system comes in—particularly at the £68 disposable income threshold—I hope that there will be a refund for people who are in receipt of legal aid.

The changes that are being proposed by various members in the debate are perfectly feasible, as well as desirable. We are not talking about enormous sums of money—the total saving on part 2 of the bill is less than £4 million. Some of the suggested changes would still allow substantial savings, would be more equitable and would be more in the interests of justice.

15:42

Jamie Hepburn (Cumbernauld and Kilsyth) (SNP): I am the second person who is not a member of the Justice Committee to speak in the debate. I do not know whether Malcolm Chisholm and I are starting a bit of a run of speeches by non-committee members. We will see where that takes the debate.

I welcome the introduction of the Scottish Civil Justice Council and Criminal Legal Assistance Bill. Unlike Lewis Macdonald, I do not particularly think that that is a mouthful; it is, indeed, a punchy title.

The bill is important. We must be consistent in always being prepared to consider progressing reforms that will ensure that our country's legal system is fit for the times.

I congratulate the Justice Committee on its work so far in assessing the bill, and I thank it for its informative stage 1 report. I am sure that the

committee—under the astute convenership of my colleague, Christine Grahame—will continue to contribute positively to scrutiny of the bill.

I welcome the proposal to create the Scottish civil justice council, which comes from a recommendation in Lord Gill's review. Any reform of that nature should be based on expert opinion; that can fairly be said to be the case with that proposal. The proposal is welcomed by much of civic society. As other members have, I received a large number of briefings in advance of the debate, which reflects the great deal of interest in the bill among stakeholders. The briefings show broad support for the creation of the Scottish civil justice council.

I will cite some of the briefings. Citizens Advice Scotland said that it sees the council as being

“an integral body to ensure the success of the reforms and then afterwards as a body to ensure these principles of coherence, accessibility and sustainability are upheld.”

In particular, it welcomes

“The intention that appointment to the council will be in line with the principles associated with public appointments process.”

The Association of British Insurers

“supports the civil justice provisions in the Bill”

and

“agrees that a body should be responsible for the implementation of the reforms proposed by Lord Gill.”

It also

“supports the creation of a Scottish Civil Justice Council”,

as do the Forum of Scottish Claims Managers, the Law Society of Scotland and—this is interesting because we might not have expected it—Friends of the Earth Scotland. Friends of the Earth has an interest under the Aarhus convention, which recognises every person's right to a healthy environment, and to which the European Union and the United Kingdom are signatories.

That demonstrates a fair degree of support for creation of the council. Lest members accuse me of quoting selectively from the briefings—people have run into trouble of late by quoting selectively—I accept that there are—

Lewis Macdonald: Mr Hepburn makes an offer that I cannot refuse. Does he accept that, although Friends of the Earth and others who have made representations support the principle of a civil justice council, they believe that it is important that the new body has from its beginning a balance between legal and lay representatives?

Jamie Hepburn: I must say that Mr Macdonald did not need to intervene, because I was about to make exactly that point. I accept that concerns have been expressed—Mr Macdonald's point

about the composition of the council being the primary one. Christine Grahame also mentioned that the issue was raised when the Justice Committee took evidence. I am fully confident that, because we are only at stage 1 of the bill process, we can continue to consider that matter. I heard the cabinet secretary and the Justice Committee convener say that the bill contains powers that will ensure that the composition of the council could be considered again in the future. It is welcome that so many stakeholders are engaged in the process.

I turn now to part 2, which will make changes to criminal legal aid. Incidentally, I am entirely relaxed that the bill deals with two different matters and I am sure that we are capable of dealing with any proposed legislation that does that. It is interesting to refer back to the consultation paper that the Scottish Government issued on that. It said that,

“In a time of reduced expenditure it is essential to focus legal aid on those who need it most”.

We can surely all unite behind that principle. I do not think that it would be contentious at all. It is clear that, in these straitened financial times, it makes sense to target support at those who need it most.

Of course, contributions are already payable in civil legal aid and for advice and assistance, including in criminal cases that involve assistance by way of representation. Therefore, the cabinet secretary's point that the changes are a matter of evolution rather than revolution was fair. It was also fair to point out that a similar, but less generous, scheme that operates in England seems to indicate that we cannot expect great problems with the operation of such a scheme in Scotland.

I also welcome the fact that the system of contributions will be progressive, with the first £68 of disposable income not being assessable for contribution. I understand that some people feel that the figure should be higher. I return to the point that I made earlier that we are at stage 1 of the process, so I am sure that they can continue to make that case. The level could also be increased by regulation in the future.

As the deputy convener of the Parliament's Welfare Reform Committee, I hugely welcome the fact that DLA and its successor personal independence payments will not be considered in any assessment for contributions. The committee has seen plenty of evidence of the difficulties that recipients already face. Inclusion Scotland was right to say that classing those benefits as income could have led to unfair treatment of disabled people. It placed that comment firmly in the context of the UK Government's welfare reform

agenda. It is welcome that the Scottish Government has committed to not including those benefits in any assessment.

It seems to be clear that the Scottish Government's approach will be to work with the Justice Committee and interested stakeholders to finesse the bill. I think that that is the right approach and one that the Government should be commended for adopting. I am sure that it will lead to the development of the best possible bill, which is what we will see happening at stage 2 of the process.

15:50

Alison McInnes (North East Scotland) (LD):

As we know—it has been said many times during the debate—the bill is in two distinct parts. Part 1 will establish the Scottish civil justice council and part 2 will make changes to the current framework for criminal legal assistance. The Scottish Liberal Democrats can support the principle of the bill, although there are a number of areas in which we will seek improvements, as the bill progresses.

I will touch on the part 1 provisions only briefly—most of my comments relate to part 2. The proposal to set up a Scottish civil justice council arose from Lord Gill's 2009 review of the Scottish civil courts. It is an entirely sensible suggestion; indeed, it is a necessary step if further recommendations from the Gill review are to be properly implemented. The council's establishment should also ensure that the civil justice system is subjected to continuous improvement.

I welcome the Lord President's assurance that although the council will not be a non-departmental public body, the appointment process will adhere to good-practice principles for public appointments—that is essential if we are to be confident in the new council—but Malcolm Chisholm is right to ask that that be enshrined in the bill.

Much of the evidence that we received in committee related to the proposed make-up of the council. As things stand, a majority of mandatory appointees will be members of the legal profession. As we have heard, the bill will give the Lord President discretion to appoint up to six additional members. From the outset, I would like the new council to include a fair balance of lay and legal representation. End users of the courts should have a clear voice. The Government has said that the bill strikes the right balance, but I ask the cabinet secretary to give further thought to guaranteeing that there will be such a balance among members of the council.

The Justice Committee recommended that lay members should not be precluded from being appointed to the role of deputy chair, and I

welcome the Government's indication that it will amend the bill to that effect.

Part 2 concerns criminal legal assistance. Although, in principle, the idea of recovering some costs for that is acceptable, the evidence to the committee has raised concerns about practicality. We must ask ourselves whether the financial savings that are likely to be made are proportionate to the risks and, indeed, the disbenefits that might arise.

I believe that access to justice and to fairness, and proportionality should underpin the new arrangements, but we have received a number of representations that, so far, the proposed arrangements do not live up to those criteria. Under the bill, anyone with disposable income of £68 per week or more, or disposable capital of £750 or more, will have to pay a contribution towards ABWOR or criminal legal aid. There is genuine concern that those thresholds are too low and will result in poor and vulnerable people having to pay contributions.

At this stage, it is difficult to bring anything fresh to the debate, but there is an issue on which I think no one has touched. The details of the charging will be set out in regulations and in SLAB's scheme of eligibility. The Justice Committee agreed with the Subordinate Legislation Committee's view that that power is a significant one, and that there is no good reason why it should not be exercised through an instrument that is subject to the affirmative procedure. The Government gave its response to that in Mr MacAskill's letter to the Justice Committee. He said:

"The scheme will provide direction to solicitors granting ABWOR on how to apply the undue hardship test ... It is not considered that once the scheme is initially approved and published that it would be a static document. As the scheme is concerned with what constitutes undue hardship for a client, or the dependents of a client, it is important that the scheme can be flexible and responsive to emerging needs. I therefore envisage that the scheme would be a 'living document' and one which the Board would keep under constant review ... I expect that Scottish Ministers' clearance of any revisions to the scheme could be obtained in most cases in just a few days. If the scheme were contained in a statutory instrument we could find ourselves in a situation where necessary, and perhaps urgent, changes are required but a Parliamentary process must be followed which prevents quick dissemination of the change."

That response causes me real concern and sets alarm bells ringing. Of course we want the scheme to be flexible, but we do not want the Government to be making it up as it goes along. I do not believe that the detail has been properly worked through or that sufficient time has been taken to define "undue hardship", and there is nothing to guard against the contributory net being cast ever wider to catch more and more people in it. That

adds to my belief that members of Parliament must be able to scrutinise the regulations, which must be subject to parliamentary process. I urge the cabinet secretary to reconsider his stance on that.

The Government's movement on disregarding disability living allowance and, in time, the PIP is welcome, but it is not the end of the story. The cabinet secretary must continue to work with Capability Scotland to find an appropriate and balanced way of calculating disability-related expenditure. We need the outcome of that before the bill completes its progress through Parliament.

Section 17 will enable ministers to disapply the requirement to obtain contributions from people who are held in police custody. The Government has said that it intends

"to discuss potential to use this provision with the Law Society".

I would welcome more clarity on that.

Concern is widespread in the legal profession that collecting summary legal aid contributions will be difficult for firms and could lead them to have to write off a proportion of their income. Such a requirement could have unintended consequences for the functioning of the summary criminal justice system and could lead to adjournments and delays, as we have heard. For that reason, I am inclined to think that SLAB is better placed to collect such contributions. I urge the Government to revisit the issue at stage 2.

We support the bill's principles, but with a number of caveats. I hope that the Government will reflect on the many concerns that all members have raised today and will lodge amendments at stage 2 that address those concerns. The cabinet secretary must ensure that access to justice, fairness and proportionality are at the heart of his proposals.

15:56

Annabelle Ewing (Mid Scotland and Fife) (SNP): I am pleased to speak in this stage 1 debate on the Scottish Civil Justice Council and Criminal Legal Assistance Bill. I, too, am not a member of the Justice Committee. I think that I am the third non-member to speak; we should form a new group—[*Interruption.*] However, as the Minister for Community Safety and Legal Affairs prompts me to say, I am a member of the Law Society of Scotland and hold a current practising certificate. In the past, I have been on the registers of civil and criminal legal aid practitioners. That is important to put on the record, as far as I understand the rules.

As we have heard from many members, part 1 of the bill proposes to establish a new civil justice

council, which will replace and expand on the functions of the Sheriff Court Rules Council and the Court of Session Rules Council. The new council will be under the Lord President's direction and oversight, and the Scottish Court Service will provide secretariat support.

Consequently, there will be a single body, which will afford greater coherence in the structure for setting court rules. I understand that the proposal has been widely welcomed as a positive development in the determination to improve the justice system's operation in Scotland.

I note and have heard this afternoon that, further to the Justice Committee's scrutiny of part 1, issues have arisen in relation to the council's remit and composition, on which I will make a few comments. The committee has—rightly—sought clarification of the likely scope of the new council's proposed policy role, given the key doctrine of the separation of powers. I was pleased to note that the cabinet secretary confirms in his response, dated 18 October 2012, to the committee's stage 1 report that the council's role in policy making will be "essentially advisory". In effect, he confirms that the bill will not impinge on the doctrine of the separation of powers.

As for the new council's composition, I note that the committee raised issues about the need to ensure proper representation of the interests of not only what could perhaps be termed the usual justice suspects but—importantly—end users. A number of members have made that point. My reading of the bill is that a balance between those two groups is being sought. I note that it is to be at the discretion of the Lord President to flesh that out in practice when he has the opportunity to appoint six additional members. From reading the report, I note that the Lord President has given assurances to the committee that a wide range of interests and users will be represented and that, given that the council's initial priority will be drafting the new, updated rules of court, there will be a need for specialist legal input at the outset.

From the representations that we have all, I think, received from different bodies, it seems that it is not just the legal profession that wants more places. David McLetchie referred to that issue. I think that it wants equivalence with the current position, which is five solicitor members, but it would have two. Groups such as Citizens Advice Scotland and representatives from the insurance industry are also lobbying for more places.

As I said in my intervention on Lewis Macdonald, I believe that we must strike a balance, as the council must be able to operate and not become unwieldy. That point was well made by the cabinet secretary. I also said earlier in an intervention that I believe that, as a matter of practice, a lot of the detailed work, which is far and

away the most important work that will be done, will be carried out by specialist subject committees rather than at the full council level.

Lewis Macdonald: When Annabelle Ewing intervened on my speech, she suggested that some lay interests could well be represented by the council sub-committees. Is it not equally true that some of the specialist work that will be required for rules revision in the initial period could be delegated to sub-committees and that, therefore, the lay-legal balance of the council could be a separate matter?

Annabelle Ewing: I accept that that is a possibility, but I am not entirely sure whether that is the best way forward in the initial period to get the rules updated and out there. However, the point is certainly interesting, and it would be worth looking into it further as progress is made on the bill.

I would welcome the cabinet secretary's agreement to lodge an amendment at stage 2 to ensure that the deputy chair of the council can be either a judicial member or a lay member. That is an important concession that has been made, which reflects issues that have been raised this afternoon on the composition of the council.

It is obvious that, in the final minute or so that is available to me, I do not have enough time to go into detail on the bill's criminal legal assistance provisions but, as I mentioned in an earlier intervention, it seems to me that the key purpose is the alignment of the criminal legal assistance scheme with the civil legal aid scheme. I believe that, as a principle, that has gained acceptance across the board. The fundamental, underlying principle is that the recipient of criminal legal assistance should make a contribution to his or her legal costs if they are able to do so.

As a member of the Welfare Reform Committee, I very much welcome the undertakings to disregard disability living allowance and to work with Capability Scotland on disability-related expenditure. I make a plea: Inclusion Scotland is very keen to be involved in that process, and I hope that there is a role for it. I also hope that war pensions will be disregarded.

In conclusion, the bill will bring forward much-needed changes to the justice system. It seems to be expected that some 82 per cent of cases will result in nil contributions, but it is important to ensure that, with the massive Westminster cuts to the Scottish budget that we face, the broad scope of the current legal aid scheme can be maintained.

16:04

Mary Fee (West Scotland) (Lab): I, too, feel the need to confess that I am not a member of the

Justice Committee. We are a growing band of people who are watching the backs of members of that committee.

I would like to focus more on part 2 of the bill, but I have some words to say about part 1 first.

The creation of the Scottish civil justice council is important for the efficiency and effectiveness of civil justice in Scotland. It will help to raise the level of civil justice to that of a modern system. I welcome the creation of such a body, which will enable the justice system to move on and implement more court reform legislation.

As I understand it, the council will have a wide remit to contribute to the on-going improvement of the civil justice system. With the creation of the new council, there is further hope that the groundwork is being laid for real change. We are embarking on a long period of reforms to our civil courts system and I agree with the statement from Lord Gill that

"The next few years will be a period of transition".

However, I share the concerns that David McLetchie expressed about the fact that the Government has chosen not to make the council a non-departmental public body. In the next few years, the council is expected to help to implement wide-ranging reforms to our court system and I feel that it will be lacking that extra level of scrutiny that NDPBs have.

The report from the Justice Committee says that the council will not be

"exempt from scrutiny and we do not anticipate that in practice it will be."

What scrutiny will be in place in practice for a body that will have an important role in the implementation of reforms to our court system?

With the make-up of the council yet to be agreed, I seek a response from the minister on the gender balance within the council, given that women are involved in at least half of civil cases that involve matters of the family and relationships.

Part 2 of the bill, on criminal legal assistance, is my main focus today. At first when I heard that plans were to be put in place to take contributions from those seeking legal aid, I was extremely concerned and I continue to have some reservations. I hope that those can be eased throughout the stages of the bill. Protecting legal aid is paramount, especially in times of recession. Civil legal aid applications are up 26 per cent since 2007-08—there is a clear link between that rise and the effects of the recession on families, for example.

I appreciate the need to address how we protect legal aid, but asking some quite frankly disadvantaged people—I do not simply mean that

in the financial sense—to contribute is of concern. Although exceptions are made for some people and certain factors are taken into consideration, I feel that the proposed level of disposable income is too low. The reason for that is simple—the classification of disposable income appears to include paying for energy costs, food bills, transport costs and other day-to-day costs that sometimes we do not account for. Living costs are rising on an almost daily basis and leaving those costs within disposable income does not favour working people.

If we look at appendix 1 of a submission from the Scottish Legal Aid Board, we see examples of the likely contributions for certain people. Case 4 gives an example of someone with an assessed disposable income of £160 per week. Although that may appear a lot over the month, there is a failure to look at the cost of food, transport and energy for the parent and child, yet the person would be expected to pay £470 for summary criminal aid. The case is acknowledged as being fictional, but if it were real, that would not appear to be fair on the parent.

I am also concerned at the lack of evidence on or investigation into whether it is fair or appropriate to take the income of a spouse or a partner into account when calculating eligibility for legal assistance. That view was also expressed by the convener of the Justice Committee.

Undue hardship must be applied in all cases, and I commend the cabinet secretary for disregarding disability living allowance—soon to be personal independence payments—in income assessments for criminal legal assistance. That would have had a further devastating effect on the welfare of disabled people when combined with the Tory attacks. However, the cabinet secretary has given a lifeline of support to disabled people who find themselves in the criminal justice system.

With the changes to legal assistance expected to go through, the debate moves on to the collection of contributions. It would be unjustified to expect the Scottish Legal Aid Board to make those collections on behalf of law firms, given the reductions in its own administrative budget. Law firms already have the means to collect fees from private clients, and only 18 per cent of those on legal aid are expected to make contributions. That amounts to firms collecting contributions from between 29 and 167 cases per year, the cost of which analysis shows to be between 2.6 and 6 per cent of earnings from criminal cases.

There has been much discussion about the perversion of people pleading not guilty in order to have their fees paid for them, but I have concerns that some people might plead guilty if their contributions will be lower than they would be for pleading not guilty. That could be a dangerous

effect of the proposals that would harm the right to a fair trial and twist the perversion in the reverse.

16:10

Sandra White (Glasgow Kelvin) (SNP): As a new member of the Justice Committee, I think that the debate has been a good one. All the contributions so far—whether they were from members of the committee or not—have been very informative for me and for other members, and perhaps even for those in the public gallery.

I will concentrate on a few points that members and interested parties have raised. First, I will touch on the proposed Scottish civil justice council. Having looked through the papers and read the Justice Committee's report, I believe that the council will be an agent of change. It will have a much wider role than the rules councils for the sheriff courts and the Court of Session, which—as members have mentioned—it will replace. I believe that giving the council a wider role to advise and make recommendations on improving the civil justice system is generally a good thing.

Jenny Marra and other members raised the point about lay members of the new council, and I welcome the cabinet secretary's reply that he will address that issue in his speech.

I want to ask the cabinet secretary a couple of questions about the civil justice council, which will undergo changes throughout the years as the justice system changes. Does the cabinet secretary view the council as an evolving body?

Can he reassure members that, if the changes are to take place, they will be monitored and—as my colleague mentioned—checks and balances will be put in place to ensure that there is full transparency in the council and discussion at a parliamentary level or otherwise?

Part 2 of the bill refers to criminal legal assistance. I have respect for Malcolm Chisholm and I take on board what he has said. However, if we are to protect access to the justice system as far as possible in relation to civil and criminal cases, we must target legal assistance at those who need it the most.

It is right for those who can afford to pay towards the cost of their defence to do so, which is what happens at present with civil legal aid. The expansion of contributions brings criminal legal aid in line with civil legal aid and corrects a manifest injustice in the current system.

Malcolm Chisholm and the cabinet secretary have both mentioned that issue. However, is it right that a victim of domestic violence must go to court to protect herself and be liable for a contribution to civil legal aid while the perpetrator of the crime can receive full criminal legal aid even

if they have far greater financial resources? To my mind, that is grossly unfair and I think that most people would see it in that way.

Almost every member has mentioned the £68 threshold. As I said, I have been reading through the papers as a new member of the Justice Committee, and my understanding is that the starting figure of £68 per week is not—as Mary Fee mentioned in her contribution—gross income or even take-home income. It is what is left after deductions, and there is quite a long list of deductions. It includes housing costs, council tax, childcare costs, loan repayments, maintenance repayments, costs associated with disability—which have been mentioned and which I will pick up on—and an allowance for dependent spouses and children. On top of that, the board has the discretion to waive a contribution if it would cause undue hardship. We need to look at that particular issue, but we have had assurances that the £68 figure can be reviewed.

Like others, I thank the cabinet secretary for what he said about DLA, which I regard as a positive step. I also thank Inclusion Scotland for its welcome briefing and positive comments on the subject of legal aid and benefits. I echo other members' comments about the decision not to take DLA and PIP into account with regard to the bill's provisions.

Jenny Marra: Does the member agree that, as well as DLA, war pensions should not be considered as disposable income?

Sandra White: Obviously, those are Westminster issues, so perhaps the member should speak to her Westminster colleagues about them. In that respect, I believe that the war widow's pension, too, should not be taxable.

I will finish with a quote from Inclusion Scotland that may, in fact, address the issue that Jenny Marra just raised. With reference to not taking DLA and PIP into account, Inclusion Scotland said:

"This is particularly salient in the context of the significant cumulative damage already being done to disabled people's incomes under the UK Government's welfare reforms."

We should support the bill at stage 1.

16:16

Helen Eadie (Cowdenbeath) (Lab): I thank the Justice Committee, its clerks and the witnesses for their work in scrutinising the bill. Christine Grahame, the committee convener, also has to be thanked for her clear elucidation of the issues. I agree with my party that we should support the bill's general principles at stage 1. My contribution this afternoon will consider the issues around the

alterations to charging, what happens in other jurisdictions, and the consultation responses.

I have chosen to comment only a little on the Scottish civil justice council, primarily because of shortage of time. However, there were 40 responses to the consultation, so I burned the midnight oil this week reading them. I paid particular attention to those from the Scottish Trades Union Congress, ASLEF and Friends of the Earth—other colleagues have referred to that organisation—and to the interesting comments that they made. I also read some of the submissions from the legal profession.

I was especially concerned to take on board some of the comments about issues such as whether members of the council should be paid. I understand the cabinet secretary's concern about that, given the tight financial position, but we need to reflect on the consultation responses and take on board the fact that we do not want to end up with a council full of retirees. We must ensure that there is a balance of representation on the council and that it does not include only people from large companies of corporate solicitors. We ought to consider that issue as the bill progresses. Further, council members should be reminded in every possible way that they have a strategic remit and should not pursue a personal lobbyist-type agenda. I think that we would all want that aspect to be monitored carefully.

I always take an interest in the number of responses that any bill consultation gets. As I said, this bill had 40 responses, but I note that there were only 10 respondents on the proposals for the charging changes. That does not really mean very much, but it is interesting to keep in mind that, for example, the consultation on the independence referendum had 26,000 respondents and that there were 56,000 respondents to the consultation on the smoking legislation. That just gives us something to reflect on.

I, too, welcome the acceptance by the Scottish Legal Aid Board and the cabinet secretary of the representations that were made on behalf of people with physical and mental disabilities. That acceptance will address the particular issues that were raised by witnesses about their especially vulnerable position and differing needs. I and the Scottish Labour Party therefore welcome the cabinet secretary's agreement that DLA and its replacement—the personal independence payment—should not form part of the income calculations for legal aid.

A practising solicitor noted in his response to the consultation that the governing principles do not adequately express the superiority of an overriding principle of justice. To that end, it was suggested that

“insofar as possible justice should be done”

should be the paramount principle when any change to the current system is considered. I hope that that point will be kept to the fore. It is always difficult, in any situation, to alter charges.

People who know me will not be surprised to hear that I sought to identify what happens elsewhere in the world, especially in other parts of the EU. We learn from the policy memorandum that other jurisdictions already have systems of contributions in their policy regimes. In England and Wales, a contributory system has operated for more serious cases for a number of years. In New Zealand, criminal legal aid is usually available only to those who face a sentence of six months or more.

In Finland, legal aid can be given in relation to both court proceedings and other matters. Those who have contributory legal aid are charged a small fee of about £30 in addition to any contribution. A defendant who faces a sentence of four months or more is usually entitled to request a public defender regardless of their financial situation, and the state covers the cost of that. However, if the defendant is convicted, he or she is obliged to pay or contribute to the costs.

In the Netherlands, free legal assistance is provided for more serious crimes where defendants are detained in police custody.

I agree with my party, Scottish Labour. We are sympathetic to the idea that those who can afford to make a contribution to the cost of their legal aid should do so, but concerns were raised at committee that need to be addressed. I will skip over some of them, including the concern about the threshold of disposable income of £68 per week, which others have mentioned, and move on to Scottish Labour's concern that the Scottish Government proposes not to reimburse those who are acquitted of a crime by refunding their legal contributions. That would mean that those who were acquitted of a crime when in receipt of legal aid would have to pay to prove their innocence. I agree with all that David McLetchie said on the issue of refunding contributions in the event of acquittal.

Whatever happens, I agree with the respondents to the consultation that any new system should minimise complexity for solicitors, applicants and the board. The system should be streamlined and easy to apply, and it should be designed to be easily processed using the legal aid online system. I understand that the key principle that appeared to have the most support in the consultation responses is:

“Practicality of application - the financial eligibility tests should be straightforward and easy to apply and minimise

differences between different aid types. The collection of contributions should be straightforward and efficient.”

That leads me to my final, personal view that contributions should be collected by the Scottish Legal Aid Board and that it should not be down to solicitors to collect them. I agree with the arguments that Graeme Pearson expressed this afternoon in that regard.

16:23

Nigel Don (Angus North and Mearns) (SNP):

This has been a fascinating debate. It is one to which I come very late and I therefore have relatively little to say. Having served my time on the Justice Committee last time round, I—

Christine Grahame: You are welcome back, darling.

Nigel Don: Thank you. Maybe I will come back, or maybe not.

I have nothing else to declare on the subject, except that I am grateful to my colleague Annabelle Ewing for mentioning the separation of powers, which is not something that we talk about in this place very often. I am delighted that she mentioned the subject, because I had every intention of doing so. Some of the representations that we have heard about the proposed Scottish civil justice council do not bear that matter in mind, so it might be an idea to put a little on the record about what the separation of powers means.

Historically, the separation of powers has been the idea that the executive, which is the Government, should be separate from the legislature, which is the Parliament, and the judiciary, which is the courts. That is roughly where the American system finds itself. When the President's Executive seems to be in a markedly different position from the politics of the legislature, we can see that that does not really work. I suspect that that is why in these islands we have long since worked on the idea that the Executive and the Parliament should pretty much be the same thing. That way we can at least all be singing from the same hymn sheet.

For a very long time we have recognised that the courts are separate and that underpins most of the Government's response to the points that have been made about how much control should be in statute for the Lord President's committee. I am grateful to Graeme Pearson for his comment about a heavy burden on the Lord—

Christine Grahame: The Lord President.

Nigel Don: The Lord President. I am sorry, we have too many lords.

I think that Graeme Pearson's comment is absolutely right, but Lord Gill will plainly be up to it,

of course. It is his job to run the courts and ensure that they do their job properly. With respect, it is our job not to tell him how to do it, but to make sure that he has the powers to do it and the legal background or underpinning for what he wants to do. Bear it in mind that, at the end of the day, if push comes to shove we can tell him what to do, but we would be wise never to do so.

Jenny Marra: Nigel Don illustrates the separation of powers. Does he agree that the policy remit currently in the bill is a policy creep into this Parliament's jurisdiction? His argument on the separation of powers should perhaps be addressed in the bill and the powers made a lot clearer and separated more.

Nigel Don: I accept that there is a risk of creep every time that we change something and put those kinds of words down, but I do not believe that that will happen in practice. The Lord President knows fine well what he and the Parliament are supposed to be doing. Our constitution works only when the two sides of our separated powers understand their remits.

Jenny Marra: It was said many times in the Justice Committee that we cannot legislate on the basis of one incumbent in a post. However benign he may be, Lord Gill will not be Lord President forever. We must make sure that our statutes are as robust as possible and give further Lord Presidents clear guidance.

Nigel Don: I understand the principle, but I disagree with it. I do not think that we need to give the Lord President guidance. The Lord President is one of a long line of Lord Presidents who know exactly what they do and understand what things are about. We have probably got the balance about right, but it is important that we have this kind of discussion and understand the basis on which we legislate. I am sure that Lord Gill understands that and that his successors will.

I have a direct question for the cabinet secretary on something to which I should perhaps know the answer but do not. Section 6 of the bill sets out who will be on the council and lists the Lord President, the chief executive of the Scottish Courts Service and others. The question that needs to be addressed is, what happens if one of those people is unable to attend? I am not talking about being on holiday. If someone is incapable of attending, for one reason or another, is there a deputy who can step in and is that allowed in statute? It is not obvious in the bill. I suspect that that should be allowed if one of the appointees were to be physically unavailable for a while.

I will move on—rapidly—to the legal aid issue of part 2. It seems that the principle behind the bill's provision is that legal aid and the rules on legal aid should ensure that there is an incentive for the

accused to tell the truth. If the provision stops the anomaly that means that it is better for someone to plead not guilty when they know fine well that they are guilty, it seems a very good step in the right direction. I think that that is what is happening and it seems that that should be the fundamental principle that underlies any of the rules on legal aid. As long as we are moving towards a situation where it is in everyone's interests—including lawyers' interests—that the truth is told as early as possible, we might be going in the right direction.

I want briefly to mention the issue of eligibility, which other members have referred to. The Subordinate Legislation Committee, of which I am convener, commented on the scheme of eligibility, which is set out in section 18, and the Government has responded that such significant powers are best left with ministers because of the flexibility required. However, others contend that that should not be the case. For what it is worth, my opinion is that the Government is probably right. Particularly when the powers are introduced, those skilled in this art will have to find some way of making them work and I am pretty sure that having to come back to this Parliament, with all the associated timetabling issues, is not a good way of providing flexibility. Nevertheless, we must ensure that the policy by which the scheme should work is laid down either in statute or in subordinate legislation thereafter. I think that that is where we are, but any thinking on the matter should focus on ensuring that the statute and regulations lay down the policy and that those who are skilled in the art can deal with the numbers afterwards.

As for refunds, there is a decent philosophical argument behind the approach that has, however, not been pushed to the nth degree, and perhaps I might be allowed to do so for a few seconds. If I am accused of something that I am simply not guilty of, it is quite possible that my life will be seriously inconvenienced and my professional reputation ruined. No one is suggesting that the state compensate me for most of that inconvenience or any loss of professional reputation. If we should be refunding those found not guilty, why are we not compensating them for accusing them in the first place?

Christine Grahame: I dread to comment, having not practised for such a long time, but I think that someone can sue, say, the police only if there has been a malicious prosecution. It would have to be something pretty heavy duty.

Nigel Don: If the member will forgive me, my question was more rhetorical than legal. If that is the understood legal position, there is no particular argument for refunding people found not guilty on relatively small matters when there might be much larger consequences for the accused.

16:32

Margaret Mitchell (Central Scotland) (Con): I welcome the opportunity to speak in this afternoon's stage 1 debate on the Scottish Civil Justice Council and Criminal Legal Assistance Bill and pay tribute to the Justice Committee for its scrutiny of the legislation.

Part 1, which follows on from the Gill review, would create a single body tasked to keep the civil justice system under review. Initially, the Scottish civil justice council will focus on the daunting task of updating the 3,400 pages of rules for the Court of Session and sheriff court; significantly, however, it will also play an important role in reviewing the wider civil justice system.

The creation of the council with this remit is a major step that will introduce a new player into the world of law reform in Scotland. Led by the Lord President and with the eminent legal and consumer representation on it, the new council, which is being created by statute, will carry real political weight. In such circumstances, it is essential that the organisation be sufficiently transparent and accountable. Although I recognise and whole-heartedly agree that the judiciary's independence is a vital principle that must be maintained, that should not be confused or conflated with the necessity of ensuring that appointments to the new council are not only accountable and transparent, but seen to be so.

I therefore share the concerns expressed by not only a number of MSPs this afternoon, but a host of organisations ranging from Citizens Advice Scotland to the Environmental Law Centre Scotland that the Lord President's appointments to an organisation that is an NDPB in all but name will not be subject to the Public Appointments Commissioner for Scotland's code of practice. If they were, it would ensure that the appointment process was transparent and robust and would, crucially, be the subject of scrutiny by the Standards, Procedures and Public Appointments Committee. It would also bring the council in line with other comparable organisations, including the Scottish Criminal Cases Review Commission, the Scottish Law Commission, SLAB and the Scottish Legal Complaints Commission. Furthermore, it would follow the recommendations of the Gill review.

Instead, the bill merely requires that the Lord President publish a statement of appointment practice without the appointments being subject to any external scrutiny. The bill does not even require such scrutiny of the appointment of judicial members. I therefore urge the Scottish Government to reconsider the provision, especially as the new council is to have the status of a statutory advisory body.

I note with interest the reasoning in part 2 of the bill for introducing criminal legal aid contributions, which in fact mirrors the Scottish Conservatives' position that the affordability of universal services should be re-examined. However, I dispute the assertion that the proposal to introduce contributions for criminal legal assistance without a corresponding provision to refund those acquitted is either fair or in the best interests of Scotland.

Annabelle Ewing: I am not entirely clear, so the member can perhaps clarify her position. Is she equating, for example, free prescriptions in the health service at the point of need and free personal care for the elderly with criminal legal assistance for the, we think, around 18 per cent of applicants who will be required to make a contribution?

Margaret Mitchell: The reasoning behind the proposal, which is that those who can afford to pay should pay, is what I am interested in. That is certainly not the policy that this Government has taken forward with the introduction of free prescriptions.

It seems to me that it is clear that having chosen to cut the legal aid bill by £10 million in real terms in the next financial year, with a further £10 million reduction planned for 2014-15, the Scottish Government now needs a policy to fund the savings. For the reasons pointed out by David McLetchie and others, the policy is both unfair and, at worst, risks access to justice, which could mean that it falls foul of article 6 of the ECHR. The convener of the Justice Committee and other members have highlighted that issue. Furthermore, the starting point for the decision to introduce contributions for criminal legal aid is that it will bring criminal legal aid in line with civil cases, where contributions already exist. However, as Malcolm Chisholm pointed out, that is a false comparison.

Criminal court proceedings are different from most civil cases in that they involve the Crown—the state—bringing proceedings against an individual. Criminal cases do not involve financial awards to the successful party, legal costs cannot be recovered in criminal cases and, crucially, the failure to win a civil case does not end up in imprisonment for the losing party. The difference between civil and criminal cases means that if contributions are to be introduced, they must apply only to those who can truly afford to pay. Despite the cabinet secretary's response to my intervention, there is a concerning lack of clarity over what exactly we mean by "disposable income", because there is no definition in the bill.

In addition, the introduction of legal aid contributions without refunds means that individuals who are wrongly accused of a crime

and who have to suffer the stress and indignity of criminal proceedings will be out of pocket if they fall on the wrong side of the contributions threshold. In contrast, a guilty serial offender thug will still be able to seek state-funded legal representation to defend themselves simply because of their income level. I suggest, cabinet secretary, that there is no fairness in that. Not only that but, as the Faculty of Advocates told the Justice Committee, the proposed contributions could well create a perverse incentive for accused who feel that they cannot afford to pay to plead guilty, merely because that would result in a fixed or reduced fee.

Further, there is a fundamental inconsistency in the bill's provision that will allow those who are retained in police custody to receive free, non-means-tested legal assistance while means testing for legal aid will apply to those in other cases that go to court. I have no doubt that the spectre of Cadder loomed large in the decision to make that distinction.

It is imperative that, if this bill is passed, its impact is closely monitored. I urge the Government to consider including a statutory review clause in the bill.

16:41

Jenny Marra (North East Scotland) (Lab): As we have heard this afternoon, the principles that underlie the bill are broadly agreed across the chamber. However, in Labour's view, the bill would be strengthened if certain points were taken on board by the Scottish Government.

I want to address the issue of civil justice policy in part 1 of the bill—I have already raised the issue in interventions. The bill mandates the council to recommend changes in civil justice policy to the Lord President, but no similar obligation exists to recommend the changes to ministers. It is our belief that policy is the preserve of the democratically accountable Government and Parliament, and should not be weakened by placing a policy obligation on an unelected body. That is a concern that is shared by some of the most eminent public law professors in Scotland. Governments are accountable to the electorate for their policy choices and, through the parliamentary system, MSPs and stakeholders should have every opportunity to scrutinise those decisions.

When I questioned the Lord President in the Justice Committee on the policy scope, he assured me categorically that the policy remit would merely be the policy of the rules and would not extend beyond that. I ask the cabinet secretary, therefore, to address the issue in his closing remarks. Would it not be better to include in the bill a much clearer explanation of the extent

of the policy remit in order to avoid any creep into the jurisdiction of ministers and the Parliament, as has been discussed this afternoon?

A second concern with part 1 relates to the request by several organisations for transparency in the council's functioning. I have heard persuasive arguments from those representing court users for greater transparency when court rules or civil justice procedures are being reviewed. They state that the publication of potential changes or an obligation to consult would be valuable to their work. I would be interested to hear the minister's opinion of those suggestions.

Another concern with part 1 that has been well rehearsed today concerns the composition of the council. We have heard many arguments that special committees will allow for more specialist representation, but I think that Malcolm Chisholm summed it up well when he said that it is quite possible that only two laypeople will be on the council. If there is a feeling across the chamber that we should increase that representation, it is important to put that in the bill so that we can ensure that it can happen.

I was reminded by Mary Fee's speech of a debate that we have had in this chamber regarding gender balance. As Labour has said in Parliament before, 80 per cent of people on Scottish public bodies are male, and I understand that the composition of the current council is one female and 12 males. I would be interested in the cabinet secretary's response in looking for a better gender balance—perhaps the 40:40:20 model that Labour has recommended in the chamber before. We know the impact of our justice system on women and of, as Baroness Helena Kennedy has often eloquently put it, the inherent bias against women in our justice system.

Turning to part 2, I will reiterate some of the concerns with the proposed level of contributions. The Government has chosen a lower limit of £68 because that is the weekly equivalent of the civil legal aid amount. It has sought justification for that in the fact that it is higher than the level in England and Wales. However, I have heard persuasive arguments to suggest that that method of calculation is flawed and that the level may be too low. The first rests on the fact that contributions for legal aid in England and Wales exist only for Crown Court cases, which account for a much lower proportion of cases than the bill provides for. The second is based on the differences between civil and criminal cases. Similarly, there are differences between the eligibility criteria for civil legal aid and the proposed undue hardship test, and the rate for civil legal aid contributions has not increased.

Kenny MacAskill: Is the member aware that the magistrates court in England operates an in-

or-out system in which there is no contribution? In that system, anyone with an annual disposable income of more than £3,398, which is just over £65 a week, fails the means test and does not get legal aid at all—not even with a contribution. Is the Scottish system not much better? Is she arguing that those who receive civil legal aid should have a harsher commitment to make than those involved in criminal cases?

Jenny Marra: I am arguing that we need to take a much harder look at the comparisons that have been made, which the Government has put before us, and drill down to the detail. If the Government is going to use the situation in England and Wales as justification, we must ensure that we are comparing like with like.

We must consider contributions alongside the chaotic lifestyles of many people who enter the criminal justice system—that point was well made by Graeme Pearson in the Justice Committee. Many organisations in Scotland have argued that people simply will not be able to afford to contribute at such a low threshold, which, as the Law Society has stated, could lead to a perverse incentive for the accused to plead guilty. If one of the core aims of the bill is to eradicate perverse incentives, I ask the minister to provide answers to why the Government remains content with such a low threshold.

I welcome the Government's decision to stop considering disability living allowance as disposable income. However, I also ask it to consider doing the same with the war pensions, which have been mentioned this afternoon. Currently, the bill considers veterans' war pensions as disposable income, and veterans would welcome that consideration being taken out.

Kenny MacAskill: Let me make it clear that war pensions are currently discounted in the assessment for ABWOR. The criteria for assessing disposable income will be set out in draft regulations. Given that we are seeking to mirror what is done in ABWOR in many instances, the position of war pensions will be considered. Considering the sympathetic view that we have taken with regard to ABWOR, the member could read into that the sympathetic view that we are likely to take.

Jenny Marra: I welcome the cabinet secretary's indication that he will take a sympathetic view on that. The fact that we are seeking to mirror the arrangements for ABWOR is not a good enough reason, however. We must use the bill to ensure that we get it right for war veterans.

A second concern with part 2 is the Government's decision not to reimburse acquitted persons for their legal aid contributions. I have heard justification for that from the cabinet

secretary, who argued that those who pay their legal fees privately are not reimbursed either. However, several organisations question the fairness and practicality of this approach.

Annabelle Ewing: Will the member take an intervention?

The Deputy Presiding Officer (John Scott): The member is in her final minute.

Jenny Marra: I am sorry, but I do not have time.

Malcolm Chisholm proposed the very practical solution of a refund for acquittals that have been funded by legal aid contributions, and perhaps that could be considered by the cabinet secretary.

Presiding Officer, I believe that I am out of time, so I will close my summing up there.

The Deputy Presiding Officer: Well done. I call Kenny MacAskill.

16:50

Kenny MacAskill: We have had a very good debate. There is uniformity around the chamber in providing some general support for the principles of the bill, and I am grateful for that.

Both the convener of the Justice Committee—in a flamboyant speech, if I may put it that way—and David McLetchie commented on the hybrid nature of the bill. However, we need to have these matters. I accept that, in an ideal world, we would have an entirely separate focus on these aspects, but we need to avoid overloading the Justice Committee or other committees. However, I accept the legitimate point that was made by Mr McLetchie, as well as by Graeme Pearson, Christine Grahame and many others. The devil is in the detail and this is a matter where there is a great deal of detail. Some things will have to come out in regulations.

Perhaps in dealing with the detail, I can try to address some of the specific points that were raised. First, Margaret Mitchell asked whether the civil justice council will be a statutory consultee. The council will have the power to

“consult such persons as it considers appropriate”,

as provided for in section 3(2)(d). That is a power rather than a duty. There will be opportunities to contribute to the council's work through its committees, and it is envisaged that the council will carry out consultations where appropriate. That seems to me to strike an appropriate balance.

Mary Fee said that the council should be made an NDPB to ensure scrutiny and accountability. However, the council will advise the Lord President and oversight rests with him. It will not be under ministerial direction and will therefore not

be an NDPB. I think that that is how it should be. However, the Lord President will not have unfettered discretion: ministers may amend the balance of the membership; an annual report and business plan must be laid before Parliament; and I intend to make the council subject to freedom of information.

Malcolm Chisholm correctly made the point that we should have the appointment principles for the civil justice council on the face of the bill, rather than relying on assurances. I do not think that we want to make the process unduly bureaucratic, but I am willing to consider putting some statement of those principles in the bill at stage 2. I think that the commitment that has already been made by the Lord President can be added to.

Jenny Marra asked whether the council's powers in respect of policy could creep into the Government's and the Parliament's decision-making powers. We need to make clear that the council will be an advisory body. It will have duties to advise the Lord President and it will have powers to advise Scottish ministers. The council must lay an annual report before Parliament. There is no need to place a protection in the bill. The decisions that appropriately rest with Government, Parliament and the judiciary will continue to do so—that is addressed in our response to the stage 1 report—so there is the appropriate separation of powers.

Mr McLetchie raised a legitimate point about why there will be only two solicitors on the council, which he is correct will be fewer than on the existing councils. The bill provides for a minimum of two solicitors and it also provides for a minimum of two advocates. The bill seeks to achieve a balance, where we have a limited number of people who can be members of the council. As was pointed out by others, much of the work will be carried out at committee level, and the current councils have around 29 members at any one time. There will necessarily be fewer members of different types if membership is to be kept to a workable limit, but I can give an assurance that the involvement of the solicitor profession will continue—at a minimum of two, although it might be more, given the Lord President's selection. Also, in terms of the working arrangements, those who have the appropriate skills will be asked and will be contributing.

Lewis Macdonald asked whether the Scottish ministers should be able to direct, or seek advice from, the council. That point was also raised by Malcolm Chisholm. I think that it is appropriate that oversight and direction of the council should sit with the Lord President and not with ministers. That is appropriate because the council will be a body that advises him, not ministers. However, it is quite clear that the council will be able to advise

ministers and we do not need to compel the council to do so in the bill. We can get advice from the body, which may come through the Justice Committee or the Government. If we feel that it is appropriate to do so, we can take that advice and legislate on it. If we feel that the council is going in a direction that we do not like or recommending a policy that would be unacceptable to Parliament, we are not required to accept that advice. The balance that has been set is appropriate.

Helen Eadie asked whether council members should be paid. The bill allows council and committee members to be remunerated for non-salaried positions. Serving judges, Scottish Court Service staff and Scottish Government and SLAB officials who have a salary and remuneration will not receive anything in addition for attending. Those who are perhaps giving up their time in private practice will be entitled to receive the appropriate remuneration. That strikes an appropriate balance—those who are doing their job in improving justice for which they are paid anyway should not get an additional entitlement, but others who are giving up their own time from paid work should be given that opportunity.

Questions have been asked about the second part of the bill. I reassure Christine Grahame, who asked whether the suspension of legal aid mid-trial would cause problems for the system—I think that the issue was touched on by Mr McLetchie, too—that the bill does not give the power to suspend a certificate if a contribution is unpaid. We are confident that arrangements can be made for the few cases in which an agent withdraws. As Mr McLetchie knows, the Public Defence Solicitors Office is a matter of some sensitivity to the profession, but it is possible that we could put in the PDSO and that would be the solution. However, I have indicated that I will not prejudge matters and I am happy to discuss the issue with the Law Society. That option is available, and if the Law Society can think of another way to do it, I am happy to enter into that discussion. The reason why I am unable to give an unequivocal answer is that we are entering into discussion and it would be inappropriate to prejudge its outcome.

Christine Grahame also asked whether the assessment of spouses' income is unjust. That issue will be covered in regulations. A spouse who is a victim will not have their resources assessed and an allowance will be made for the cost of dependants, including spouses. Also, issues related to spouses can be ignored if there is undue hardship.

Graeme Pearson referred to the use of the PDSO. As I have said, that is a matter of some sensitivity to the Law Society, and I accept that.

Malcolm Chisholm mentioned thresholds, which Jenny Marra, too, commented on. Contribution

levels were substantially reformed in 2009 and they were updated in 2011. I appreciate that there may be some issues with where matters have got to since 1986—when I was still a practising lawyer—but we have been addressing the issue. If there is any slippage, that relates to those who have gone before us.

We do not think that SLAB is better placed to collect summary contributions, which are best collected by the legal agents. The exception is when there is a significant sum involved, which is why we are using SLAB to collect contributions for solemn proceedings. That is what happens in civil proceedings and ABWOR: it is the solicitor who sees, assesses and deals with the person at the time who will collect the contributions. In the main, we are not talking about huge amounts of money, and it is for that reason that we remain committed to that approach, because it is important that the solicitor addresses that.

Mary Fee thinks that the contribution of £470 in case 4 of the SLAB examples is unfair. The person in that example earns £482 a week. That is not a king's ransom or a Premier League footballer's wages, but £470 does not seem to me to be an unfair level of contribution for somebody who is facing a criminal charge to make when they have an income of £482 a week.

We realise that those are matters of balance and will have to be reviewed. That is why we are happy to ensure that the regulations will be available to the committee as we go into stage 2 and stage 3. They will have to be reviewed and updated as circumstances change. We have given a direction on DLA and are doing something similar on war pensions.

These are difficult times. We must make changes to legal aid, but there is a fundamental principle that the victim of crime should not be expected to contribute while the perpetrator is not expected to do likewise. The bill changes a manifest injustice that existed in the law of Scotland. There will be difficulties for the legal profession in some instances, but let us remember that 82 per cent of those who apply for and receive criminal legal aid will do so without making a contribution. The remaining 18 per cent will make a limited contribution—one that they are perfectly capable of meeting.

Parliamentary Bureau Motions

17:00

The Presiding Officer (Tricia Marwick): The next item of business is consideration of a Parliamentary Bureau motion. I ask Joe FitzPatrick to move motion S4M-04577, on committee membership.

Motion moved,

That the Parliament agrees that—

Jamie Hepburn be appointed to replace Bruce Crawford as a member of the Finance Committee;

Adam Ingram be appointed to replace Richard Lyle as a member of the Public Petitions Committee;

Nigel Don be appointed to replace Annabelle Ewing as a member of the Rural Affairs, Climate Change and Environment Committee;

Richard Lyle be appointed to replace John Mason as a member of the Standards, Procedures and Public Appointments Committee;

John Mason be appointed to replace Jean Urquhart as a member of the Equal Opportunities Committee;

Jim Eadie be appointed to replace Stuart McMillan as a member of the Subordinate Legislation Committee.—[*Joe FitzPatrick.*]

The Presiding Officer: The question on that motion will be put at decision time.

The next item of business is consideration of a Parliamentary Bureau motion. I ask Joe FitzPatrick to move motion S4M-04578, on substitutions on committees.

Motion moved,

That the Parliament agrees that—

Christina McKelvie be appointed to replace Jamie Hepburn as the Scottish National Party substitute on the Public Audit Committee;

Bob Doris be appointed to replace Stuart McMillan as the Scottish National Party substitute on the Equal Opportunities Committee;

Maureen Watt be appointed to replace Rob Gibson as the Scottish National Party substitute on the Public Petitions Committee;

Richard Lyle be appointed to replace Jim Eadie as the Scottish National Party substitute on the Health and Sport Committee;

Gil Paterson be appointed to replace Nigel Don as the Scottish National Party substitute on the Rural Affairs, Climate Change and Environment Committee;

Kenneth Gibson be appointed to replace Christina McKelvie as the Scottish National Party substitute on the Welfare Reform Committee.—[*Joe Fitzpatrick.*]

The Presiding Officer: The question on that motion will be put at decision time.

Decision Time

17:00

The Presiding Officer (Tricia Marwick): There are three questions to be put as a result of today's business. The first question is, that motion S4M-04534, in the name of Kenny MacAskill, on the Scottish Civil Justice Council and Criminal Legal Assistance Bill, be agreed to.

Motion agreed to,

That the Parliament agrees to the general principles of the Scottish Civil Justice Council and Criminal Legal Assistance Bill.

The Presiding Officer: The next question is, that motion S4M-04577, in the name of Joe FitzPatrick, on committee membership, be agreed to.

Motion agreed to,

That the Parliament agrees that—

Jamie Hepburn be appointed to replace Bruce Crawford as a member of the Finance Committee;

Adam Ingram be appointed to replace Richard Lyle as a member of the Public Petitions Committee;

Nigel Don be appointed to replace Annabelle Ewing as a member of the Rural Affairs, Climate Change and Environment Committee;

Richard Lyle be appointed to replace John Mason as a member of the Standards, Procedures and Public Appointments Committee;

John Mason be appointed to replace Jean Urquhart as a member of the Equal Opportunities Committee;

Jim Eadie be appointed to replace Stuart McMillan as a member of the Subordinate Legislation Committee.

The Presiding Officer: The final question is, that motion S4M-04578, in the name of Joe FitzPatrick, on substitutions on committees, be agreed to.

Motion agreed to,

That the Parliament agrees that—

Christina McKelvie be appointed to replace Jamie Hepburn as the Scottish National Party substitute on the Public Audit Committee;

Bob Doris be appointed to replace Stuart McMillan as the Scottish National Party substitute on the Equal Opportunities Committee;

Maureen Watt be appointed to replace Rob Gibson as the Scottish National Party substitute on the Public Petitions Committee;

Richard Lyle be appointed to replace Jim Eadie as the Scottish National Party substitute on the Health and Sport Committee;

Gil Paterson be appointed to replace Nigel Don as the Scottish National Party substitute on the Rural Affairs, Climate Change and Environment Committee;

Kenneth Gibson be appointed to replace Christina McKelvie as the Scottish National Party substitute on the Welfare Reform Committee.

The Presiding Officer: That concludes decision time.

Meeting closed at 17:01.

Correction

The First Minister has identified an error in his contribution and provided the following correction.

The First Minister:

At col 12617, paragraph 6—

Original text—

I am concerned when I hear the Conservative Party allude to a moratorium on wind energy development. There are now, I think, 18,000 people employed directly in renewable energy across Scotland.

Corrected text—

I am concerned when I hear the Conservative Party allude to a moratorium on wind energy development. There are now, I think, 11,000 people employed directly in renewable energy across Scotland.

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