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Pàrlamaid na h-Alba

Official Report

MEETING OF THE PARLIAMENT

Thursday 15 November 2012

Session 4

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Scottish Parliament

Thursday 15 November 2012

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

General Question Time

The Deputy Presiding Officer (Elaine Smith): Good morning. The first item of business is general question time. In order to get as many members in as possible, I would be grateful for short and succinct questions, and answers to match.

Income Tax

1. Mark McDonald (North East Scotland) (SNP): To ask the Scottish Government what the implications would be for the Scottish budget if income tax was reduced in Scotland. (S4O-01479)

The Cabinet Secretary for Finance, Employment and Sustainable Growth (John Swinney): The United Kingdom Government has scheduled the Scottish rate of income tax for introduction in April 2016. The Office for Budget Responsibility produced forecasts in March that estimate that, by 2016, a 1p change in the Scottish rate of income tax would increase or decrease the Scottish budget by about £560 million.

A reduction of about £560 million would have significant consequences for the Scottish Government's delivery of its programme, including for policies such as the continuation of the council tax freeze, which has helped about 1.8 million households.

Mark McDonald: Does the cabinet secretary agree that the calls by the leader of the Conservative Party in Scotland for a reduction in income tax by up to 2p, which would remove about £1 billion from the budget, is yet another example of the economic illiteracy that defines the Tories? Does he agree that it is ridiculous to call for a debate on taxation while, at the same time, her party is denying Scotland the full powers of taxation that would allow us to grow our economy and deliver social justice for our people?

John Swinney: Mr McDonald makes a number of fair points. As we operate with a fixed budget, a change in taxation of that nature would result in a significant erosion of available resources. It is incumbent on any party that pursues that strategy to set out clearly what the implications would be for the Scottish budget. Today would be an opportunity for the Conservative Party to do that, and it would be nice if the Conservative members were here. [Interruption.] I see that they are

represented by their emeritus member, John Scott. It is nice that one of them turned up.

Dyslexia (Examination Support)

2. Willie Coffey (Kilmarnock and Irvine Valley) (SNP): To ask the Scottish Government how it supports students with dyslexia, particularly in written examinations. (S4O-01480)

The Minister for Learning, Science and Scotland's Languages (Dr Alasdair Allan): Assessment arrangements for students who require additional support during written examinations that are undertaken in schools is the responsibility of the Scottish Qualifications Authority. It has policies and procedures in place to allow adjustments in candidates' external assessment, usually in exams, for candidates with additional support needs, where that is justifiable.

Decisions about what support is needed for students with dyslexia in further and higher education are made by colleges and universities. Disability advisers in institutions will be able to advise such students what assistance is available to them in their academic studies and in written examinations.

With the support of Dyslexia Scotland, the Scottish Government launched the dyslexia toolkit to help with the identification of pupils with dyslexia. An enhanced version of the toolkit was launched at the Scottish learning festival this year.

Willie Coffey: The minister will be aware that dyslexia can be a particularly debilitating condition that often affects people's verbal as well as written communication skills. Can he assure me that students who take written and indeed verbal exams in any language, including English, are not penalised due to their disability? Are exam markers made aware of a candidate's dyslexia?

Dr Allan: I should perhaps clarify my understanding that, on the whole, exam markers are not made aware of any issues of disability or indeed dyslexia that candidates have, and that all candidates are marked on the same basis. However, during exams, every effort is made to make allowances for candidates with dyslexia, be it in the form of extra time, a scribe or perhaps computing assistance.

Where exams in modern languages deal with grammar and the construction of language, some of those allowances might be difficult to make, but computing or information and communication technology allowances would be more than possible.

Environmental Protection

3. Neil Findlay (Lothian) (Lab): To ask the Scottish Government how it protects the environment. (S4O-01481)

The Minister for Environment and Climate Change (Paul Wheelhouse): The Scottish Government protects the environment through its work to maintain and develop an appropriate regulatory framework and the support it gives to regulatory agencies such as the Scottish Environment Protection Agency and Scottish Natural Heritage, and through its own direct actions in fulfilling its responsibilities as Scotland's largest landowner. We also work with a wide range of stakeholders to help demonstrate the importance of our environment and to encourage best environmental practice throughout Scotland.

Neil Findlay: The minister will be aware that, in March, the *Daily Record* highlighted the issue of alleged toxic waste from the Edinburgh trams project being dumped in Pumpherston, in my region. Despite numerous phone calls, emails and meetings with SEPA and the minister's predecessor, we are no further towards establishing whether the waste was dumped illegally or whether the contractor, Bilfinger Berger, will be prosecuted as a result.

Eight months on, what is going on with this case? My constituents smell a rat.

Paul Wheelhouse: I remind Mr Findlay that his party voted for the trams and this party did not.

Neil Findlay: This is a serious issue.

The Deputy Presiding Officer: Order.

Paul Wheelhouse: The case has been going on since February and involves a lot of technical complexities. SEPA has been active in pursuing the issue and has engaged with local representatives to keep them informed about any risk. Quite simply, it has not yet been possible to conclude whether the waste soil is suitable for deposit at the Drumshoreland bing. The onus is on the waste producer to satisfy SEPA that the waste material is suitable for disposal at that site, and its failure to produce appropriate evidence has resulted in the lengthy delay in the resolution of the issue. However, I am happy to note that an agreement was reached at a recent meeting between the City of Edinburgh Council, Transport Scotland and SEPA to send the waste in question to another landfill site that is appropriately licensed to accept it.

John Scott (Ayr) (Con): The minister is aware that ash dieback is present at at least 14 sites in Scotland. From discussions with scientists recently, I believe that there may already be scientific solutions involving the treatment of fungal conditions, such as ash dieback. Such

solutions are used in crop protection plant science, with crossovers into the treatment of human fungal conditions. What scientific programme is the Scottish Government initiating with a view to finding a cure for ash dieback?

Paul Wheelhouse: As was pointed out at the COBRA—Cabinet Office briefing room A—meeting that I took part in last Friday, no current solution has been identified that will cure ash dieback, so the member is incorrect in that regard. The main strategy that we are seeking to deploy at the moment is to reduce the spread of the disease. I am glad to confirm that there are still only 14 sites in Scotland, compared with 112 in the wider environment in England.

The spread of the disease has to be slowed. We are working to identify resistant strains of ash tree. That is the approach that the United Kingdom Government and the Scottish Government are seeking to undertake, through the Forestry Commission and the Forestry Commission Scotland.

Training (Accessibility)

4. John Park (Mid Scotland and Fife) (Lab): To ask the Scottish Government what assistance is available for people with additional accessibility requirements seeking to undertake training or a modern apprenticeship. (S4O-01482)

The Minister for Youth Employment (Angela Constance): Equality aspects of modern apprenticeships are an important dimension of our discussions with our partners and stakeholders about the programme.

I have already held discussions on modern apprenticeship starts for disabled people with a number of organisations including Remploy Employability Services. Our engagement with employers is vital in that regard as, in some cases, we are trying to effect a change in cultures and attitudes within the workplace.

John Park: I highlight the case of a profoundly deaf constituent of mine who is trying to undertake periodic updating of his heavy goods vehicle and long goods vehicle training. He is paying for that training himself but is finding it impossible to pay for the sign language support that he needs to continue. We approached Skills Development Scotland, a training provider and eight agencies and non-governmental organisations to try to get support so that my constituent can take forward the training with the sign language support that he needs. He is finding it financially impossible to take forward the training.

The Deputy Presiding Officer: Question, please.

John Park: I believe that my constituent is falling between the gaps in the system. If I were to supply the minister with the specific details of the case, could she look into it and have her officials provide me with a response that might move the situation forward?

Angela Constance: I would be delighted to receive that information. As a former social worker, as a constituency MSP and as the Minister for Youth Employment, I am always particularly interested in the cases where the system does not automatically help individuals. I am always more than willing to assist individual MSPs with cases that need some championing.

Dennis Robertson (Aberdeenshire West) (SNP): Is the minister aware whether the United Kingdom Government's access to work scheme—as I have said before in the chamber, it is the best-kept secret—is available to those who are seeking apprenticeships?

Angela Constance: I will find out that information for Mr Robertson. He has a point in saying that the access to work scheme needs to be better promoted among young people, so that they know whom it could benefit. That is also true of a number of schemes. I would like to undertake work to ensure that young people with disabilities are better aware of the opportunities that currently exist, whether through our national training programmes, our modern apprenticeship programme or other schemes provided by parts of Government elsewhere.

Community Asset Transfers

5. John Wilson (Central Scotland) (SNP): To ask the Scottish Government what progress has been made in promoting community asset transfers in urban locations. (S4O-01483)

The Minister for Local Government and Planning (Derek Mackay): We are funding the Development Trusts Association Scotland to provide the community ownership support service. The service, which was piloted last year, provides help and advice to community organisations that are interested in asset ownership. During the pilot, the service provided information, advice and support to more than 166 community organisations and 26 local authorities, with 29 community organisations receiving intensive support. It also identified promoting interest in urban areas as a key challenge. We have continued our investment in the Development Trusts Association and have asked it to identify further support that is needed for deprived urban areas as a priority group.

John Wilson: Can the minister advise me when all local authorities will have a policy in place to promote community asset transfer, particularly

North Lanarkshire Council, which is transferring, in April 2013, all its community facilities to an arm's-length trust? What assurances can be given to communities on continued Government support for community ownership of local community facilities?

Derek Mackay: I expect all 32 local authorities to take a proactive approach in recognising the potential to unlock local opportunities through appropriate community asset transfers. To further support efforts in the area, the Government is conducting an exploratory consultation on the draft community empowerment and renewal bill, which potentially presents a massive shift of responsibilities and opportunities from local authorities and others within the state to communities. I am sure that the member will welcome the work on that bill.

International Development (Occupied Palestinian Territories)

6. Sandra White (Glasgow Kelvin) (SNP): To ask the Scottish Government what its international development strategy is in relation to the occupied Palestinian territories. (S4O-01484)

The Minister for External Affairs and International Development (Humza Yousaf): The Scottish Government condemns the recent escalation of violence between Israel and Palestine. On behalf of the Scottish Government, I offer our condolences to the innocent civilians affected by recent events.

The Scottish Government's international development fund supports a robust programme of development work and is making a real difference to some of the world's most vulnerable people. As the member knows, as well as providing funding to support long-term development projects in sub-Saharan Africa and south Asia, we support humanitarian interventions around the world, which included a response to the crisis affecting Palestinians in Gaza in 2009 as a result of operation cast lead.

Sandra White: I congratulate the Fire Brigades Union Scotland on the Palestinian training project for which the Government has provided money.

The minister will be aware of recent developments by the Israeli Government to construct 1,285 houses in east Jerusalem and the West Bank in a move that has been condemned by Foreign Office minister Alistair Burt as illegal under international law. He will also be aware of the killing of Palestinians in Gaza yesterday in Israeli air strikes reminiscent of operation cast lead, which saw more than 1,000 Gazans killed. Does the minister agree that those actions are against humanity and against international law?

What role can the Scottish Government play in alleviating the suffering of the Palestinian people?

Humza Yousaf: The member raises two very important points. First, I and the Scottish Government absolutely agree with the United Kingdom Government and others in the international community that the expansion of those Israeli settlements is, as the member states, illegal under international law. The Scottish Government strongly condemns such actions and believes them to be contrary to the goal of achieving peace in the region. We call on Israel to immediately halt any expansion of such settlements as a matter of priority.

Secondly, on the escalation of the violence, the killing of innocent civilians—be they Israeli or Palestinian—is to be utterly condemned. We urge all sides to exercise restraint. The Scottish Government has previously stated—and I reiterate—that it is wrong to punish the people of Gaza collectively for the actions of their Government. The situation in Gaza continues to be a humanitarian crisis, and we join the voices of the international community in calling for the illegal blockade to be lifted.

The Scottish Government supports the view that long-term peace in the middle east between Israel and Palestine is best served by a two-state solution. We urge all parties to engage constructively, proportionately and—most important—within the obligations imposed on them by international law to find a peaceful way forward. [*Applause.*]

Sentencing Policy

7. James Kelly (Rutherglen) (Lab): To ask the Scottish Government what consideration it has given to reviewing sentencing policy. (S4O-01485)

The Cabinet Secretary for Justice (Kenny MacAskill): The Scottish Government keeps sentencing policies and matters relating to sentencing under review and brings forward proposals for consideration by Parliament as appropriate. Our aim is to ensure that the courts have the powers available to them to impose custodial or tough community-based sentences appropriate to the circumstances of each case.

Proportionate and effective sentencing policies can assist in tackling specific issues. For example, people are 50 per cent more likely to be sent to prison in Scotland for knife possession than in England and Wales. The message is clear that people who choose to carry a knife risk significant penalties.

James Kelly: I thank the cabinet secretary for that answer. I draw his attention to the case of Alexander Mortimer, who was sentenced to eight years' imprisonment for committing sexual

assaults on two young children at Glenburgh nursery in Rutherglen. That sentence was reduced on appeal to five years and 11 months on the basis that no account had been taken of an early guilty plea. As I am sure the cabinet secretary will be aware, the reduction in his sentence has caused much upset and anxiety to many of my constituents. In the light of those circumstances, will the cabinet secretary commit to an early review of sentencing guidelines to take proper account of the feelings of victims in such cases?

Kenny MacAskill: It would be wrong of me to comment on any individual case, but on the general matter let me say that we believe—and this has been the position of every Administration—that sentencing is best left to the judiciary. That said, we are committed to, and Parliament has passed the basis for, delivering a Scottish sentencing council, which I keep under discussion—indeed, just yesterday I met with the Lord President. It appears to me that the best vehicle for dealing with such issues will be the Scottish sentencing council, the delivery of which has been enacted by Parliament and which we are working with the judiciary to seek to deliver in due course.

Renewables (North Ayrshire)

8. Kenneth Gibson (Cunninghame North) (SNP): To ask the Scottish Government what it is doing to encourage the renewables industry to invest in North Ayrshire. (S4O-01486)

The Minister for Energy, Enterprise and Tourism (Fergus Ewing): The member will be aware that in October the First Minister announced a commitment of £4.3 million from the national renewables infrastructure fund for the Hunterston offshore wind test centre. Once fully operational, the facility—which is also benefiting from a £15 million investment from SSE—will be capable of hosting three full-scale wind turbines designed for offshore deployment.

Kenneth Gibson: I thank the minister for his reply. He will be aware that, under the previous Labour Government, the United Kingdom lost 37 per cent of its manufacturing employment, which hit areas such as North Ayrshire disproportionately hard. At last night's meeting of the Ayrshire economic partnership, concerns were expressed about when the investment will come to fruition. Can the minister give us some information as to when that investment and employment will be secured?

Fergus Ewing: Initial work is going ahead and we expect the project to proceed relatively swiftly. I praise Ayrshire economic partnership for its work. That work, and the work of others, is contributing to the fact that renewable energy in Scotland now supports 11,000 jobs—more than in the whisky

industry. The potential to develop offshore wind, wave and tidal energy could see Scotland leading the world renewable energy industry in that respect, with the possibility of 5,000 turbine manufacturing jobs in Scotland.

Margaret McDougall (West Scotland) (Lab): Will the Government consider looking into the current barriers to community engagement and access to funding in relation to renewable energy? Specifically, in relation to the Kelburn wind farm in North Ayrshire, the communities of the Garnock valley are excluded from access to funding despite being located close to the wind farm.

Fergus Ewing: I would be happy to correspond with the member about that case. We have very close engagement in community renewables schemes, and recently we have had two conferences in that respect. We have a target of creating 500MW from community renewables schemes, which would generate £2,400 million of community benefit for communities all over Scotland. That would make a massive contribution to economic development in rural and island Scotland.

The Deputy Presiding Officer: Before we move to First Minister's question time, members will wish to join me in welcoming to the gallery the head of the Palestinian mission in the United Kingdom, Professor Manuel Hassassian. *[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-00974)

The First Minister (Alex Salmond): I am sure that the whole chamber will join me in offering our sincere condolences to the family of Captain Walter Reid Barrie of the Royal Scots Borderers, 1st Battalion the Royal Regiment of Scotland, who was tragically killed in Helmand province, Afghanistan, on remembrance Sunday. It is clear from the many heartfelt tributes paid to Captain Barrie in recent days that he was a popular, dedicated and widely respected soldier. As his body is returned to these islands today, he will be remembered as a fine example of the Scottish soldier, and the thoughts of the whole Parliament are with his family at this sad time.

Johann Lamont: That was eloquently put by the First Minister. We, too, send our condolences to the family at this saddest of times.

On 28 June, Mike Russell, the Cabinet Secretary for Education and Lifelong Learning, told the chamber:

"There is no reduction in funding for colleges in financial year 2012-13."

He repeated—to applause from Scottish National Party members, unsurprisingly—

"Presiding Officer, there is no reduction in funding for colleges in financial year 2012-13."—*[Official Report, 28 June 2012; c 10776.]*

Was he right, or was he misleading the Parliament?

The First Minister: He was correct. The resource funding position for colleges is £545 million in 2011-12, and it is £546 million in 2012-13.

Johann Lamont: Although Mike Russell was famously—or perhaps, notoriously—grasping the thistle, it seems that the First Minister was grasping for an answer. Unfortunately, it was not a correct one. *[Interruption.]*

The Deputy Presiding Officer (Elaine Smith): Order.

Johann Lamont: The truth is, as we have found out from the Auditor General and from the independent Scottish Parliament information centre, that the cabinet secretary was, in fact, wrong. College budgets have been cut this year. In the light of those independently sourced facts,

was Mike Russell right, or was he misleading the Parliament?

The First Minister: An increase from £545 million to a £546 million resource budget is, by definition, an increase in funding. Incidentally, that is about as exact an answer as anybody has given in any Parliament, and I cannot imagine why Johann Lamont read out something that was obviously pre-prepared.

The Audit Scotland report, of course—as Johann Lamont may or may not be aware—did not take account of the increases in funding that were announced after the provisional budget, which is why, in that sense, the Audit Scotland report was out of date. [*Interruption.*] If the report did not take account of announcements that had been made, by definition, that means it was out of date. It might well be that Audit Scotland, because of the timing, is not responsible for that, but surely Labour members must be aware of that because they have devoted a great deal of time and attention to the issue.

Given that the resource budget has increased to £546 million—at a time, incidentally, when the business budget for further education colleges south of the border has been declining dramatically—that represents, in these extraordinarily difficult times, an increase of funding between the two financial years.

Johann Lamont: That was this week's white noise. The First Minister's pre-prepared defence of his minister was ill advised. In weeks past, we have seen the credibility of the First Minister's back benches burned in defending him; he is ill advised to burn his credibility in defending his education minister. No matter how big the briefing in front of him, I must tell him that not even Mike Russell believes Mike Russell anymore.

The *Official Report* of this Parliament records Mike Russell as saying:

"There is no reduction in funding for colleges in financial year 2012-13."—[*Official Report*, 28 June 2012; c 10776.]

However, yesterday, he denied it. He told the Parliament:

"I take the opportunity to say that I have never said that there were no cuts".—[*Official Report*, 14 November 2012; c 13463.]

Mike Russell is saying—[*Interruption.*]

The Deputy Presiding Officer: Order.

Johann Lamont: Mike Russell is saying that he never said what he said. Thank goodness it was being recorded on both occasions because, of course, those two statements by him cannot both be right. The reality is that college budgets are being slashed. It is no longer a question of whether Mike Russell misled Parliament; the

question is when he did so. Is misleading Parliament not the kind of offence that should cost a minister his job?

The First Minister: The first of the two quotations referred to financial years 2011-12—the £545 million—and 2012-13, which is the £546 million. Revenue funding for colleges is projected to go to £512 million in 2013-14. That gives Johann Lamont the absolute reason why Mr Russell has factually reported the situation to the Parliament.

Thanks to the investment in the regionalisation process and the non-profit-distributing programme, if we look at resource and capital funding over that period, the budget goes from £590 million to £616 million. That is the investment of which members will be aware, which they will see throughout Scotland—in Forth Valley College, Kilmarnock College, the Glasgow colleges and Inverness College—and which is transforming the infrastructure of the college sector in Scotland.

Given the fact that Johann Lamont now has those figures and that they are perfectly compatible with what Mr Russell said in the chamber, perhaps she will withdraw one of her many resignation calls.

Johann Lamont: In the world of the SNP, where you can say whatever you like, whenever you like, regardless of what you said yesterday and what you are going to say tomorrow, presumably—

Members: You, you, you.

The Deputy Presiding Officer: Order.

Johann Lamont: Presumably that qualifies as a credible answer. In the rest of the world, it makes no sense. [*Interruption.*]

The Deputy Presiding Officer: Order.

Johann Lamont: I remind the First Minister that Mr Russell said there were no cuts in 2012-13. [*Interruption.*] I will repeat it. He said that there would be no cuts in 2012-13. Yesterday, he said that he never said that there would be no cuts. Those two things do not match. [*Interruption.*]

The Deputy Presiding Officer: Order.

Johann Lamont: The First Minister is well aware that the Auditor General has said that no case has been made for regionalisation.

It would be serious enough if Mike Russell had misled only the Parliament, but he has also misled the people of Scotland, including the 100,000 young people who are out of work and would benefit from the college sector being funded and invested in rather than being cut.

This week, we found out that Mike Russell told a college chair—*[Interruption.]*

We know that, if the SNP back benchers are noisy, it is because they do not like hearing what is being said to them. It would suit them better to ask the hard questions themselves from time to time rather than be background noise. *[Interruption.]*

The Deputy Presiding Officer: Order.

Johann Lamont: This week, Mike Russell told a college chair that he should resign because he no longer had any trust in him. No one can have any trust in Mike Russell after this week.

This week, we found out that Mike Russell told a college chair that he would sack him if he had the power.

Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP): Question, question.

Johann Lamont: Mike Russell has misled the Parliament and the First Minister has the power to sack him.

The Deputy Presiding Officer: Ms Lamont, could we have a question?

Johann Lamont: Why will the First Minister not sack a minister—*[Interruption.]*

The Deputy Presiding Officer: Order.

Johann Lamont: Why will the First Minister not sack a minister who denies our young people an opportunity to go to college and, when challenged about it, misleads the Parliament? *[Interruption.]*

The Deputy Presiding Officer: Order. Can we hear the First Minister?

The First Minister: When Johann Lamont has reached the stage of appealing for the SNP back benchers to do her job for her and ask the questions on her behalf, it reveals the full extent of her unwillingness to accept the facts—£545 million to £546 million is not a cut in funding.

The projected future move to £512 million is, but luckily the investment in capital gives hope for the colleges on the regionalisation process. By any measure, the colleges and universities of Scotland are being extraordinarily well funded in comparison with the colleges and universities south of the border. That is obvious. It should be a matter of some celebration for the chamber that this year we have a record number of Scottish full-time students at college and university in Scotland, despite the extraordinarily difficult financial circumstances.

I am afraid that I was rather expecting Johann Lamont's course of questioning. Unfortunately for her, Paul Sinclair had already tweeted the call for

Mr Russell's resignation this morning. He said that Mr Russell was

"now exposed and he should now quit",

so it was not the greatest surprise on earth to me for that call to be repeated, puppet-like, by Johann Lamont a few hours later.

Today's call adds to the long list—the litany—of resignation calls that the Labour Party has made to the Government. It has called for the resignation of Kenny MacAskill, John Swinney, Nicola Sturgeon, Richard Lochhead, Fiona Hyslop and—again—Nicola Sturgeon. The only person whose resignation it has not called for is me. That is a totally extraordinary situation, but we wait for next week, when Paul Sinclair will no doubt set Johann Lamont right.

The only difficulty with Paul Sinclair and turning the Labour Party into an extended version of Twitter is that other people tweet as well. On 1 November, Ian Smart, the prominent Labour blogger and former president of the Law Society of Scotland, wrote:

"If there is a more stupid, politically tone deaf, possibly fifth columnist, political adviser than Paul Sinclair then I've yet to meet them."

That is from a Labour source. If that is what the Labour Party thinks about the Labour Party, it is little wonder that the extension of Labour into one massive tweet does nothing for politics in this country.

Johann Lamont: The First Minister is responsible for addressing the needs of the unemployed young people in this country. The idea that a juvenile trawl through the tweets of this world is any kind of response is a complete disgrace to anyone in this place or anywhere else who believes themselves fit to represent the people of Scotland.

The First Minister: I am not responsible for the juvenile tweets of Paul Sinclair—that is Johann Lamont's responsibility. Our responsibility is to invest in the Scottish economy through the capital investment programme. The record number of apprenticeships in the Scottish economy—26,000—is our responsibility, as is the small business bonus, which is helping small companies to survive. Our responsibility is to get for this Parliament the economic powers that will allow us to take the country to prosperity and economic freedom.

Secretary of State for Scotland (Meetings)

2. Ruth Davidson (Glasgow) (Con): I would like to associate myself and the entire Scottish Conservative Party with the First Minister's remarks about Captain Walter Reid Barrie, and to

pass on our condolences to his family after the tragic events of remembrance day.

To ask the First Minister when he will next meet the Secretary of State for Scotland. (S4F-00970)

The First Minister (Alex Salmond): I thank Ruth Davidson for making it clear that the whole Parliament endorses those remarks.

I have no plans to meet the secretary of state in the near future.

Ruth Davidson: Yesterday, we heard the Cabinet Secretary for Education and Lifelong Learning ignore the impact of Scottish National Party policies on Scotland's colleges as simply getting rid of what he arrogantly dismissed as "hobby courses".

I will give a few examples of courses that are now no longer available under the education secretary's stewardship: higher national certificate in diagnostic imaging—gone; higher national diploma in human resource management—gone; HND in technical support—gone; HND in network computing—gone; qualifications in healthcare and nursing—gone. Mike Russell has labelled those subjects "hobbies", which they are anything but.

Will the First Minister instruct his education secretary to apologise for his insulting attitude towards the thousands of ordinary people who are doing nothing but their best to improve their lives?

The First Minister: As Ruth Davidson should know, the reason for the commitment in terms of full-time equivalent courses in colleges is to ensure that we maintain the number of students in those courses—the courses that she mentioned. Indeed, we have increased that number since 2006-07.

The reason for measuring the full-time equivalent courses is simple. It is that the full-time equivalent values a year-long course—full-time courses such as the courses that Ruth Davidson mentioned—in a proper way. It does not say that such a course is the same as a three-month or two-month course. That is why the full-time equivalent figure is incredibly important.

This year, in terms of full-time equivalents, a record number of Scottish students are at Scottish colleges and universities. If Ruth Davidson cared to glance south, she would see a dramatic decline in student numbers across the college and university sector in England.

If Ruth Davidson came here with a programme and she could say, "We will invest in colleges and universities, and look at the tremendous record of our colleagues south of the border," she would have some credibility, but she is in no position to attack a situation in which we have managed, under the most extreme financial pressure from

her colleagues, to secure a record number of Scottish students in full-time courses at college and university in Scotland. I believe that that is an achievement and a commitment to the young people of Scotland.

Ruth Davidson: Let us ask the First Minister to look at the situation north of the border, because the 70,000 fewer places here are not an illusion. That is the harsh reality and it is part of the choices that his Scottish Government is making.

The First Minister just said that he is delivering for Scottish colleges under what he calls severe financial pressure. Conservative members accept that the Scottish budget has had a 6 per cent real-terms cut—although it is still up in cash terms—but he must accept that a 24 per cent cut to college budgets comes directly from him and not from Westminster. That is his responsibility. *[Interruption.]*

The Deputy Presiding Officer: Order.

Ruth Davidson: There are now 70,000 fewer opportunities for ordinary people to learn skills that would help them to get on. As the unemployment gap between the rest of the UK and Scotland grows, those people need more opportunities, not fewer. The truth is that the First Minister is raiding college budgets to fund the Scottish National Party's electoral bribe of free university places.

The Deputy Presiding Officer: Question, please.

Ruth Davidson: That is little more than educational arrogance and snobbery: university good, solid college places bad. *[Interruption.]*

The Deputy Presiding Officer: Order.

Ruth Davidson: When will this First Minister finally admit that his priorities are damaging the chances of thousands of ordinary Scots?

The First Minister: I do not think that snobbery is the strongest ground for the Conservative Party.

Can we get back to the facts? Let us do a direct comparison. As Ruth Davidson well knows, finances in Scotland are—for the time being—controlled by budgets south of the border. According to projections, the Department for Business, Innovation and Skills further education resource budget for colleges in England will decline from £4.4 billion to £3.2 billion, which is an extraordinary cut in nominal and real terms.

The position that Ruth Davidson quoted for the projection in Scotland was from before Mr Swinney was—wisely—able to find more funds in the revised budget for the college sector this year. The revenue budget for resource for colleges and student support will go from £545 million to £546 million in 2012-13. In comparison with the situation

south of the border, that is an extraordinary achievement.

The intention to concentrate on full-time courses is because we are looking to secure employment for the youngsters involved. The fact that a record number of our youngsters are in full-time courses in colleges and universities in Scotland, against the dramatic declines from Ruth Davidson's party's Government south of the border, represents a substantial investment in our young people and a substantial achievement for the Scottish Government in the most difficult circumstances.

I understand that Ruth Davidson's answer to looking for extra funding for Scotland's colleges is to cut income tax in Scotland and offer another £1 billion reduction in Scotland's budget. That is what she appeared to say in her anniversary address last week.

If Ruth Davidson can ever reconcile what is currently happening in London for English colleges with a much better position that is defended in Scotland, and if she can reconcile her ambition to slash Scotland's revenue budget even further with her calls for investment in Scotland's college sector, she will come to the chamber with a degree of credibility. If she ever comes to have a degree of credibility, I will not care whether or not the Conservative Party is snobbish.

The Deputy Presiding Officer: Jamie Hepburn has a brief constituency question.

Jamie Hepburn (Cumbernauld and Kilsyth) (SNP): The First Minister will be aware of the details that are emerging about the proposed merger between AG Barr and Britvic. It has been reported that, as a result of the merger, some 500 jobs may be lost out of a combined workforce between the two companies of 4,000. Does the First Minister agree that it is incumbent on AG Barr to clarify, as a matter of urgency, what that means for the workforce and factory at the Cumbernauld site?

The First Minister: The constituency member raises an understandable and important constituency concern. I hope that the company is able to explain in more detail the consequences for the workforce as the merger process goes through. The company is extremely successful, and there is every reason to believe that it will continue to be extremely successful. I think that everybody in Scotland will want that success to be shared by its workforce.

BBC Scotland (Job Losses)

3. Stewart Maxwell (West Scotland) (SNP): To ask the First Minister what the Scottish Government's position is on the likely impact of

the proposed job losses at BBC Scotland. (S4F-00980)

The First Minister (Alex Salmond): This is a very important time for Scotland, and it is vital that BBC Scotland maintains the highest standards of quality in reporting public debate. The Scottish Government continues to hold grave concerns about the ability to achieve that in the face of the proposed job losses and, indeed, the job losses that have already happened.

The Cabinet Secretary for Culture and External Affairs and I have regularly expressed our concerns to the BBC about the risks to its news and current affairs output. I hope that, now more than ever, the BBC is able to heed those warnings.

Stewart Maxwell: The First Minister will be aware of the "Newsnight" report and the subsequent events that flowed from it, including the £450,000 pay-off. In light of those events, does the First Minister think that it is appropriate for the BBC to continue with its disproportionate cuts to staff at BBC Scotland, particularly as those cuts will be detrimental to the BBC's ability to give wide coverage of the major events that will take place in Scotland over the next few years?

The First Minister: First, I make the very important point that the crisis that is currently engulfing the BBC must not be allowed to obscure the underlying issues, which relate to extremely serious allegations of abuse and exploitation of children. Although those allegations date back a number of years, they must be properly investigated.

That situation underlies serious and institutional failures of leadership at the BBC, which must be immediately addressed. This morning, I expressed my view publicly that the public would have confidence and trust in Greg Dyke taking forward the corporation's own inquiries into the issue. More than that, I think that journalists in the BBC would have great confidence in him. We remember the demonstrations that took place when he was unfairly evicted from the BBC some years ago.

Such an appointment would be a good start in restoring the BBC's reputation. I can speak from personal experience about the most recent director general, who understood the commitment that our national broadcaster has to covering the full extent and range of political and current debate in Scotland.

David Stewart (Highlands and Islands) (Lab): The loss of senior BBC editorial staff in the north may well mean that programmes are driven from Pacific Quay rather than Plockton. Does the First Minister share my view that the BBC's

responsibility is to represent all of Scotland, not just the central belt?

The First Minister: I agree with that, and I welcome the member raising the issue again. I arranged a meeting with the new director general to discuss that very point, but unfortunately that meeting will have to be with someone else. Nonetheless, the important point that the BBC, as Scotland's national broadcaster, must serve all the country is well made by David Stewart, and I support it.

Fuel Duty Increase

4. Stuart McMillan (West Scotland) (SNP): To ask the First Minister what the Scottish Government's assessment is of the economic impact on Scotland of the planned 3p increase in fuel duty. (S4F-00972)

The First Minister (Alex Salmond): The increase in fuel duty would represent a £130 million tax rise for Scottish households and businesses at a time when Scottish motorists already face some of the highest fuel costs in Europe and it will serve to undermine economic recovery. Recent research by the National Institute of Economic and Social Research shows that, as well as representing a tax rise for households and businesses, the increase in fuel duty could cost up to 50,000 jobs across the United Kingdom.

Stuart McMillan: The Federation of Small Businesses has warned that 79 per cent of its members say that fuel prices are having a damaging effect on their business and 62 per cent say that they are having to increase their prices as a result. In a week when inflation has increased again and the Bank of England has cut its forecast for economic growth, does the First Minister agree that the chancellor should listen to households and businesses, cancel the 3p rise and put fuel prices on a stable footing with a proper fuel duty regulator?

The First Minister: It should be noted that, in the United Kingdom, pre-tax prices for petrol and diesel are among the lowest—they are the second-lowest—in Europe, but prices at the pump are among the highest in Europe. The Treasury now takes 81p per litre in VAT and fuel duty, which contributes to inflation and, particularly at this time, threatens to damage the economy. The chancellor needs to take key steps in a few days' time in the autumn budget statement. He needs to invest in growth, support recovery and increase capital investment substantially, and another step would be to cancel the fuel duty rise.

Criminal Legal Aid

5. Lewis Macdonald (North East Scotland) (Lab): To ask the First Minister what the purpose

is of the Scottish Government's proposed changes to criminal legal aid. (S4F-00986)

The First Minister (Alex Salmond): The purpose of the changes that are set out in the Scottish Civil Justice Council and Criminal Legal Assistance Bill is to introduce contributions to solicitors' fees in criminal legal aid, where the client can afford to pay such contributions. Doing so will ensure parity between the different types of legal aid and, by delivering savings, will help to maintain access to justice in economically difficult times.

Lewis Macdonald: I welcome the reference to parity. Given that contributions under civil legal aid are collected centrally by the Scottish Legal Aid Board, will the First Minister undertake to establish the full costs to the board of doing the same for contributions under criminal legal aid and instruct the board to discuss those costs with representatives of the legal profession before the bill returns to the chamber at stage 3?

The First Minister: It would cost an estimated £600,000 for SLAB, rather than solicitors, to collect summary contributions. That would be a very significant sum when we face a situation in which the budget for legal aid is being cut by 7.3 per cent, which of course compares with a decline in England and Wales of 17 per cent. The effort has been to maintain access to justice and to prevent budget restrictions from having a damaging impact on that, with adverse consequences for other aspects of the justice system. That is what we are trying to do. There is no doubt that the proposals will lead to more efficient collection of contributions.

Lewis Macdonald will be well aware that solicitors already collect clients' contributions for advice and assistance, preliminary work and guilty pleas, so the principle already exists in the system. In these difficult times, I hope that everyone realises that trying to protect the basis of the legal aid system requires a system that works in the most efficient and economically viable way.

Scottish Police Authority and Chief Constable for Scotland

6. Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP): To ask the First Minister what the Scottish Government's position is on reports of a so-called turf war between the chief executive of the Scottish Police Authority and the chief constable for Scotland. (S4F-00971)

The First Minister (Alex Salmond): The Police and Fire Reform (Scotland) Act 2012 sets out clear roles and responsibilities for the Scottish Police Authority and the chief constable. It is for the SPA and the chief constable to decide how

best to fulfil those responsibilities. Discussions are on-going on the scope of the functions that the SPA will deliver. The SPA has written to the Scottish Government setting out a framework under which decisions on the issue will be made by its board, in consultation with the chief constable.

Christine Grahame: As it is not seemly—to put it mildly—for the issue to be trailed in the media, with alleged quarrels over who is to be in charge of backroom staffing and information technology, will the First Minister confirm that issues of the framework and demarcating the functions of the SPA and the chief constable will be resolved soon, and that we can be confident that operational policing is solely the responsibility and remit of the chief constable?

The First Minister: I am happy to say that I believe that progress is being made on the issue. We have made it clear to the SPA that it must put in place a process to reach an agreed position, in partnership with the chief constable. As I mentioned, the Police and Fire Reform (Scotland) Act 2012 sets out clear roles and responsibilities. It is for the SPA and chief constable to decide how best to fulfil those responsibilities, but discussions are on-going on the scope of the functions that the SPA will deliver. No proposals have been submitted as yet, so no decisions have been taken, but the process certainly will not act on the chief constable's operational independence.

Graeme Pearson (South Scotland) (Lab): In the light of his response, will the First Minister acknowledge that the Parliament's intention in legislating was to deliver full operational independence to the incoming chief constable and that moves to limit that independence would be unwelcome and unwarranted?

The First Minister: As I said to the convener of the Justice Committee, the proposals will not impact on the chief constable's operational independence.

Margo MacDonald (Lothian) (Ind): In no way do I think that the Parliament should interfere with the running or management of the new police force, but I hope that we will have a chance to comment on the plans before they are put into effect, and I would like to know whether there are plans that would take care of a chief constable who—I will be delicate—does not quite work out.

The First Minister: Margo MacDonald will never be short of opportunities to comment in the Parliament and elsewhere. I assure Margo that progress is being made on the issue. To facilitate more comment, I shall write to her and keep her informed of the progress that is being made.

Scottish Literature on the Big Screen

The Deputy Presiding Officer (John Scott):

The next item of business is a members' business debate on motion S4M-04351, in the name of Nigel Don, on Scottish literature on the big screen. The debate will be concluded without any question being put.

Motion debated,

That the Parliament notes the production of the film, *Sunset Song*; understands that this is an adaptation of a 1932 Lewis Grassie Gibbon novel and is set in the Mearns area of Kincardineshire; believes that it will be directed by Terence Davies and star Peter Mullan, Agyness Deyn and Stuart Martin; considers that, although it will be beneficial to the Mearns area in the short-run, it is unlikely that there will be any long-lasting legacy or benefit; believes that recent films such as *Brave* and *The Angels' Share* have raised awareness of Scotland and that it would be beneficial to the country's film and TV industry to have additional self-sustaining post-production, studio and sound stage facilities to ensure that all aspects of screen production can be carried out in Scotland, and considers that such additional capacity would encourage production companies from around the world to shoot in Scotland.

12:33

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

It was announced a few months ago that a film of the classic novel "Sunset Song", by Lewis Grassie Gibbon, is being considered. I understand that Terence Davies is to be the director and that a prospective cast has been assembled.

The novel is set in the Howe of the Mearns, in the heart of my constituency, so I started to wonder what impact the making of the film would have on the community there and indeed on wider Scotland. It would be unwise not to use authentic settings for such a story, so I can be fairly sure that there will be some location shooting, but what will happen beyond that? Will it be possible to use a Scottish studio? What about all the post-production?

Responses to inquiries suggest that much of that business will go elsewhere. That is disappointing and it is a missed opportunity. Scotland has achieved a great deal in feature film making in the 30 years since Bill Forsyth's "Local Hero"—a movie in which a rich American tries to buy a Scottish beach. Notable successes such as "Shallow Grave", "Trainspotting", "Ratcatcher" and "The Angels' Share" will no doubt be joined by "Sunshine on Leith", which is in production as we speak and stars one of our great talents, Peter Mullan.

Our ancient landscape, diverse cities and historic architecture have attracted film makers from Hollywood to Bollywood. Despite intense and

increasing competition from our neighbours, Scotland remains a popular location for international film-makers, as we saw recently with the filming of “World War Z”, “Cloud Atlas” and “Under the Skin”. Film-makers come here not just because of our mountains, glens and medieval tenements, but because we boast excellent crews, world-class talent and extremely professional location services throughout the country.

We have produced world-class actors, including household names such as Tilda Swinton, Peter Mullan, Ewan McGregor, James McAvoy, Gary Lewis, Martin Compston, Kelly Macdonald and Gerard Butler. We have world-class writers such as Paul Laverty, world-class producers such as Iain Smith, world-class directors such as Lynne Ramsay and David Mackenzie, and world-class composers such as Patrick Doyle and Craig Armstrong, to name but a few. I note that one of Screen Academy Scotland’s graduates, Tali Yankelevich, has been long listed for an Oscar in the documentary short subject category.

Despite all those talented individuals and wonderful natural assets, we have yet to reach the levels of production, audience and economic impact that are experienced by other small, successful countries in Europe—for example, Denmark and Ireland. In the highly competitive and highly internationalised world of film, we lack some of the crucial levers that we require in order to attract more films here, to retain more of the value that they can bring and to grow our domestic production sector. Put simply, we need more films to be made in Scotland.

Film is a hits-driven business, and to have more hits, we need more films. Not all films need to be big-budget films, as films such as “The Magdalene Sisters” and “Neds” have demonstrated. How can we achieve that? We need financial incentives to bring international production—that is what the rest of the world provides—to Scotland. We need investment in infrastructure and we need, especially, studio facilities that will attract productions and give our local film-makers scope to produce a wider range of movies. We need more direct investment in film production to boost the level of ambition in Scotland, including a greater contribution by broadcasters, who have a responsibility to work with public and private finance to raise the ambition of our big and small screen production.

We need to create more work and more opportunities for people who work in film. As I have noted, our attraction for incoming productions is based in no small part on our world-class crew, but to sustain such a specialised and highly skilled workforce we need a consistent mix of high-value work; that is, network television drama and domestic film productions.

How can we achieve that? We need to encourage talent and skill from an early age, and to ensure practical media literacy and encourage aspiring young film-makers to develop their talents. Put simply, we need to inspire our youngsters. We need investment in specialist skills development in the further and higher education sector, including our national screen academy. We need to train the next generation.

We need to support business development across the whole film value chain, from production to exhibition, thereby ensuring that our film-related businesses are able to take advantage of new technologies and revenue models. The part that is missing is a world-class studio and facilities village.

We must be clear that that will not be successful in isolation. When competing on the international stage, we must ensure that we have the necessary financial incentives and that support skills are developed to serve the industry. We are missing an opportunity. Scotland is a natural film set, from sea to mountain. We have the artistic talent and skills. We ought now to enhance the production facilities to ensure that we can build a world-class industry here in Scotland.

12:38

Mark Griffin (Central Scotland) (Lab): I welcome the opportunity to participate in this afternoon’s debate and congratulate Nigel Don on securing it.

I have grown up watching talented Scots flying the flag proudly for Scotland in film and television, on screen and on the other side of the camera. At the same time, Scotland offers the perfect location for production companies, from its beautifully scenic Highlands and lowlands to its bustling cities. Our country’s natural beauty has served and continues to serve as the perfect location.

The fact that Scotland’s film and television industry is so diverse is a testament to the talent of our directors, producers, writers and actors. It acts as a beacon, spreading Scotland’s story across the globe, whether that is through fiction or non-fiction. Films such as “Brave” show Scotland’s Highlands as a deeply mythical and magical place. Films such as “Trainspotting”—one of my favourite films of all time—display the harsh realities of life facing young people in cities such as Edinburgh and Glasgow at the height of economic depression. “The Angels’ Share”, which was mentioned earlier, shows us all the hilarity of the Glasgow patter and after all that laughter we can always look to the Disney classic, “Greyfriars Bobby”, if we want a film that will tug gently on the heartstrings.

Nigel Don's motion highlights the upcoming transformation of the classic 1932 Lewis Grassic Gibbon novel, "Sunset Song", into film. The novel depicts the hardship that was faced by the working classes 100 hundred years ago. Scheduled to be shot on location here and in Sweden, I have no doubt that the film will capture the hearts of many.

More and more often, Scotland is playing host to directors and producers who see what Scotland has to offer. A certain Mr Bond has made his way back home to Scotland on four occasions, in a number of different guises—most recently in the box office smash, "Skyfall". We were all captivated, too, when just last year Glasgow was transformed into zombie-occupied Philadelphia for the Brad Pitt blockbuster "World War Z", which is set for release this year. That is an example of how local authorities can open up cities as production sets and invite film-makers to Scotland.

Scotland's actors are taking the world by storm too. As mentioned earlier, household names such as Gerard Butler, Kelly Macdonald, David Tennant, Robbie Coltrane, James McAvoy, Ewan McGregor and Peter Capaldi are all A-listers—or are sure to be A-listers soon enough. Our directors have also been mentioned and they have established themselves on the international scene, as well. Lynne Ramsay, Paul McGuigan and Kevin Macdonald have already had international success and will, I am sure, have more.

A great deal of progress is being made within the Scottish film industry and it is important that it continues to grow and develop. This year is the year of creative Scotland and it is important that the Scottish Government supports, where it can, the continued development of our film industry along with local authority partners—such as Glasgow in the case of "World War Z".

So often, a country of our size can get tarred with a certain stereotype; there are people in pockets of the world who believe that Scotland is full of kilt wearers who have an unhealthy obsession with whisky and a little animal known as a haggis. Sometimes the film industry perpetuates that myth, but it has also been instrumental in showing the talents, the creativity, the skilfulness and the beauty that Scotland has to offer.

I close with a remark from one of the directors whom I spoke about earlier, Kevin Macdonald. When he was asked why he had chosen to film in Scotland, his reply was:

"Scotland delivered the perfect mix of ancient and modern. Its breathtaking scenery was easy to find and easy to shoot. All-weather crews, modern facilities, epic locations and world class cities to return to in the evening. Why would I shoot anywhere else?"

Indeed, Presiding Officer. Why would anyone go anywhere else?

The Deputy Presiding Officer: Why, indeed? I call John Mason to be followed by Annabel Goldie.

12:43

John Mason (Glasgow Shettleston) (SNP): I thank Nigel Don for raising the subject and for securing the debate.

When I was younger, I thought that all good films were made in America, the duff ones were made in England and virtually none was made in Scotland. What changed that for me was going to the cinema—I think it was in 1994—to see "Shallow Grave". That was the first time I remember coming out of a cinema having really enjoyed a Scottish film and feeling proud that we could do something such as that ourselves. I suppose that the fact that I found it funny also says something about my sense of humour.

However, it has been clear for a number of years that although urban and Highlands settings are ideal for films, we lack the

"post-production, studio, and sound stage facilities",

as referred to in the motion.

Clearly the subject matter of films that are made in Scotland varies enormously. The motion mentions "Brave"—I did not realise that it was based on Scottish literature. However, it was an enjoyable film and it follows in a line of many films that have been set in Scotland in recent years.

"The House of Mirth" in 2000, starring Gillian Anderson, used Glasgow City Chambers and is one of a number of films that have used Glasgow's buildings and the fact that the grid system in the Glasgow streets closely resembles that in many American cities.

More Scottish films that I have enjoyed in recent years have included "My Name is Joe" in 1998, which featured the Forth and Clyde canal if memory serves me correctly; "Sweet Sixteen", set in Inverclyde; "Red Road", which used the high flats in Glasgow; and one of my favourites in recent years, "Neds" in 2010, which I felt had a strong message about a youngster with no positive adult role models in his life, either at home or in school, who went seriously off the rails. That is not to mention animated films such as "Brave" and another recent film, "The Illusionist", which is set in Edinburgh and the Highlands.

I am, of course, keen that any new facility be located in Glasgow. BBC Scotland and STV are located close together at Pacific Quay on the south bank of the Clyde. Glasgow City Council deliberately targeted that area for media development with the building of the squinty bridge across the river, so it would seem to be the

obvious location if we are going to develop in that field.

As well as specifically Scottish and Scottish-themed films, a number of major Hollywood productions have used Glasgow as a location. Mark Griffin mentioned “World War Z”—or, as I am instructed by my more American-orientated friends, “World War Zee”—which features Brad Pitt in George Square and Cochrane Street. It was fascinating to see the city transformed to look like Philadelphia, right down to the information boards having Philadelphia maps stuck on them in place of the Glasgow maps.

Another recent film that was shot in Glasgow is “The Fast and the Furious 6”, which I understand involved some 250 crew working through the night in the Broomielaw, Cadogan Street and Wellington Street areas. The Glasgow Film Office estimates that those three weeks of filming injected some £20 million into the economy, which is very encouraging. I also understand that in 2011 the Glasgow Film Office received more than 300 location inquiries, which resulted in more than 200 productions being shot in the city, slightly less than half of which were for TV.

I thought that I had better go to the cinema last night to prepare for the debate. I saw “Skyfall”, which I was glad to see featured Scotland towards the end, although I had to wait until I was the very last person in the cinema to see the National Trust for Scotland appear in the credits. Perhaps we could be a bit higher up the credits in the future.

The challenge is to see whether we can expand on the benefits and keep more of the work that surrounds such films in the local economy. We do not want to be the country that has its raw materials extracted by multinational companies while we receive only the crumbs.

If I was to disagree with one point in Nigel Don’s motion, it would be the claim that

“it is unlikely that there will be any long-lasting legacy or benefit”

from a film’s being shot in Scotland. I believe that filming in Scotland is positive because it attracts tourists, conferences and so on, but I am otherwise happy to support the motion.

12:47

Annabel Goldie (West Scotland) (Con): I too thank Nigel Don for bringing the debate to the chamber. Scotland has a wealth of artistic talent, especially when it comes to TV and film production, and it was my pleasure to cover some of that territory in the recent members’ business debate on “River City”.

Mr Don is correct to refer to the importance of that creative presence in Scotland. Our creative

industries employ 60,000 people across more than 9,000 businesses, and approximately 15,000 people are employed in Scotland’s screen industries alone. We currently attract £20 million to £25 million a year in location spend from production companies that are shooting films and television productions here. The annual production spend on the screen industries in Scotland is £243 million. All of that is a significant contributor to the economy, and it also benefits tourism. Interestingly, film tourism accounts for 10 per cent of the total value of tourism to the British economy, and it is vital that we tap into that.

The forthcoming film of “Sunset Song”, the Lewis Grassie Gibbon classic, is an exciting prospect for Scotland. I note Mr Don’s specific concern about there being no “long-lasting legacy or benefit” from that production, but in that regard I am perhaps where John Mason was in the final part of his contribution. It is correct that we should never take anything for granted, but I wonder whether Mr Don’s pessimism is entirely justified.

In the past 60 years, Scotland has starred in and benefited from many film classics that have been shot in various locations and have showcased the beauty of our country. Epics such as “Whisky Galore!”, “The Maggie”, “Geordie”, “The Thirty-Nine Steps”, “Gregory’s Girl” and “Local Hero” are written into film legend, and undoubtedly created a positive impression of Scotland, enhancing visitor interest.

The Cabinet Secretary for Culture and External Affairs (Fiona Hyslop): On that point, is Annabel Goldie aware that one in five overseas visitors to the UK is inspired to visit by images that they have seen on film and television?

Annabel Goldie: That is a very helpful contribution to the debate and it bears out what both Mr Mason and I are saying.

Recently, the Harry Potter films, “Brave” and the new Bond film, “Skyfall”, have all generated widespread interest in Scotland and there are good examples of Scotland capitalising on that. Following the release of “Brave”, VisitScotland has launched a movie map that

“allows visitors to explore the castles, culture and myths of Scotland—where legends come to life.”

It highlights the castles, myths and landscapes that inspired Disney Pixar during the making of the film.

VisitBritain is mounting its biggest ever film tourism campaign to cash in on the release of “Skyfall”. Its initiative is aimed at persuading families to holiday in Scotland who might have been deterred earlier in the year due to major events such as the London Olympics or the Queen’s diamond jubilee. VisitScotland is not

participating in that £3 million campaign, although scenes were filmed in Glen Coe. However, VisitScotland is screening adverts in trailers before "Skyfall" across the country as part of its autumn surprise yourself campaign.

The one intervention that poses a question mark above the enduring attraction of Scotland as a film location is of course the ubiquitous presence of wind farms but, thankfully, city locations are proving popular.

We know that the use of Scotland as a film location can bring a myriad of lasting benefits. That has been happening over the years and we know that there are strategies to capitalise on that. It may be that more can be done in the post-production area to cement that legacy, and Nigel Don is right to highlight that potential. We shall look forward to "Sunset Song" translating into a film classic that showcases the north-east of Scotland and the rest of our country.

12:51

Bob Doris (Glasgow) (SNP): I thank Nigel Don for bringing this members' business debate to the chamber.

Around six feature films a year are produced in Scotland, but screen academy Scotland believes that that is well below the level that is required for a stable film industry. At that level, the industry is far more susceptible to dramatic peaks and troughs than it is in comparable countries with a greater output.

The Scottish industry tends to be quite top heavy and is often driven by one or two blockbusters. In 2006, Scottish films took £7 million at the UK box office, which was in large part due to Kevin Macdonald's "The Last King of Scotland". In 2005, however, Scottish films took only £400,000 in the UK. That kind of instability discourages investment, and that can lead to greater instability.

Creative Scotland has noted that Scotland's facilities for large-scale studio productions are fairly limited compared with those in similar countries and that they need to be improved. To compound matters, those countries often have more attractive tax incentives for investors. On that front, Ireland has often been cited as an example. Unlike Scotland's average of five or six films per year, Ireland's average is around 20, despite Ireland having a smaller population. Scotland has a globally recognised brand that is arguably more distinctive than that of countries such as Denmark, yet Denmark's film industry is several times the size of ours.

I welcome tax breaks that exist at UK level. For instance, film production companies can claim

significant additional tax relief for films with a core expenditure of more than £20 million. Indeed, in the last UK budget, George Osborne announced that that would be extended in April 2013 to high-end UK drama, animation and video games. However, I see a structural flaw in that tax relief. It denies Scotland a specific competitive advantage and it denies Glasgow the advantage that it needs to become a creative centre of excellence. Whether we believe that an independent Scotland should be able to create bespoke tax conditions to attract the finest international production companies to Scotland or whether we believe that the UK Parliament should do that, we should all agree that it needs to be done, for the benefit of Glasgow and the benefit of Scotland's film industry.

The Scottish Government has sought to target tax support to Glasgow for the promotion of the Scottish film industry by designating creative Clyde, which encompasses Film City Glasgow and Pacific Quay, as an enterprise zone for the creative industries. Businesses based there can claim 100 per cent business tax relief, which represents an estimated injection of £275,000 by the Scottish Government. Scottish Enterprise is also keen to attract a purpose-built film studio to Scotland that could rival the likes of Pinewood in England. I am sure that having enterprise zone status in Glasgow will give us the competitive edge in chasing that investment. I note that Creative Scotland is keen to contribute to that if it can do so. There are huge opportunities for Glasgow and for Scotland.

Glasgow City Council is also keen to promote film within the city, to its credit. It founded Glasgow Film Office for the express purpose of attracting international investment, and it has been successful. We have heard about the investment, the money and the exposure that "World War Z" brought to my city.

I believe that the Scottish Government, Creative Scotland, Scottish Enterprise and the city council are all focused on delivering film and production facilities for Glasgow and for Scotland. I am sure that Glasgow can become a film-making and production hub to rival any in Europe, but I ask the cabinet secretary, in her closing speech, to assure me that our Scottish Government is helping to co-ordinate those efforts. I look forward to a bright future for film production in Glasgow and across Scotland. I would like to think that, in the years to come, Pacific Quay will be mentioned in the same breath as Pinewood for its excellence in film production.

12:56

The Cabinet Secretary for Culture and External Affairs (Fiona Hyslop): I congratulate Nigel Don on securing the debate.

The late Donald Dewar's great speech at the opening of this Parliament evoked

"the speak of the Mearns, with its soul in the land".

It was good to hear Nigel Don and others speak of the Mearns and the story of Lewis Grassie Gibbon's "Sunset Song". It is a great novel and one that truly deserves to have recognition, and it has its soul in the land. The great strength of "Sunset Song" and the "Scots Quair" trilogy, of which it is the first part, is how a male author centred his work on a fully believable, strong, politically engaged Scottish woman, Chris Guthrie. Watching Vivien Heilbron's terrific performance in the role in BBC Scotland's earlier television adaptation and then reading the book was a formative experience for me as a teenager, as I am sure it was for many members, women and men alike. That underlines how valuable it can be to read literature from our own country, and I am confident that our new curriculum will offer opportunities for more children to benefit from "Sunset Song".

I am thrilled that the novel is being adapted for film. If it matches the book and the TV programme, it will certainly be a landmark production. That it will be produced by Bob Last from Glasgow, directed by Terence Davies and star Peter Mullan and Agyness Deyn certainly augurs well, and that the work revolves around the terrible human and emotional cost of the first world war makes it all the more timely as we prepare to commemorate the centenary of that war.

I am an enthusiast for film, but we learn from the last novel in the trilogy, "Grey Granite", that Chris Guthrie is not. I will quote a sentence that tells how Chris and her mother travelled past the site of the Parliament to go to the Picturedrome cinema, which used to stand on Easter Road. They went

"down Royal Mile, and up Little James Street to the Picturedrome; and paid for their seats and went in and sat down; and Chris felt sleepy almost as soon as she sat, and yawned, pictures wearied her nearly to death, the flickering shadows and the awful voices, the daft tales they told and the dafter news."

That might seem a discouraging scene to mention in a debate about film, but it is instructive. If we read on in the chapter, we discover the reason for Chris's disdain, which is that the film is a cheap Hollywood melodrama that is set in a fictionalised New York and has nothing to say to her. Just as access to literature about our country and experiences is vital, so too is access to film production that speaks of the Mearns and the rest of Scotland. That has great cultural value. As Nigel

Don's motion brings out, it also has economic value—a value that is growing but has the potential to grow more.

Film forms part of the creative industries, which are one of the seven key growth sectors for Scotland's economy. The film industry has nearly 400 production and related companies in Scotland and they generate a turnover of £1.2 billion a year. *[Fiona Hyslop has corrected this contribution. See end of report.]* I say to Bob Doris that about 15 to 20 feature films are shot in Scotland each year. There are a range of companies, including Park Circus, which distributes classic films, Savalas, which is innovating in sound production, and other companies that find locations, build sets and design props, to name just a few activities.

Scotland is becoming a sought-after location for filming. Successes include "World War Z", which was filmed in parts of Glasgow; the science-fiction hit "Prometheus", which had scenes shot in the evocative landscapes of the Isle of Skye; and the latest Batman film, "The Dark Knight Rises", which showcased compelling Highland scenery and delivered a significant economic benefit, as the production spent approximately £1.1 million in the area and retarmacked the local airport runway so that a C-130 Hercules could land on it.

Location shooting also encourages tourism, as I said earlier. VisitScotland calculates that almost a quarter of overseas visitors visited a film location while in Scotland—set-jetting, I think it is called in the parlance. It is remarkable to think that this year will have seen the release of what will almost certainly be the two most-watched films set in Scotland: Disney Pixar's "Brave" and the James Bond film "Skyfall". The latter was filmed in Glen Coe, and I note that the National Trust for Scotland, which owns Glen Coe, has just appointed a dedicated locations manager. On that, I think that John Mason has a point about how far up the credits we might want our locations to be.

The public sector in Scotland is working with the industry to support its growth, which Bob Doris touched on. Creative Scotland's lottery funding for film sits at £3 million for 2011-12, increasing to £4 million by 2013-14. Training was mentioned earlier, and Creative Skillset is working with the screen sector to invest in our film talent of the future. For example, it is collaborating with BBC Scotland, the Broadcasting, Entertainment, Cinematograph and Theatre Union, Creative Scotland and Skills Development Scotland on the television drama training programme, which is supported by an investment of £800,000 over the next two years. That supports the training of producers for high-end TV drama and feature films.

In all of that, the public sector is working with the film sector. For example, earlier this year, a

£500,000 commitment from Creative Scotland helped to launch the Mackendrick fund, which levers in private sector funding to invest in films, developed by the industry itself, with strong Scottish connections.

Nigel Don signals in his motion the contribution that could be made to the film industry by having a self-sustaining production centre. Creative Scotland has recently committed £75,000 to work with the industry on a feasibility study into how that can be achieved, with provisional further funding of £1 million identified if the study shows a way forward.

Presiding Officer, you might recall that your predecessor in the chair of this Parliament when it was adjourned in 1707, the Earl of Seafield, said:

“There’s ane end of ane auld sang.”

The reconvening of this Parliament marked the beginning of a new song. That has been accompanied by a flowering of our creative arts, including film. We have achieved a lot in film and I believe that, with independence and the ability, for example, to develop the kind of film-friendly financial regime that Ireland, despite its current difficulties, has not just protected but extended, we could do even more.

I look forward to seeing the new “Sunset Song”. It is part of that new song of Scotland and of a Scottish film movement that is not at sunset but rather is heading towards a noontime zenith.

13:02

Meeting suspended.

14:30

On resuming—

Points of Order

Hugh Henry (Renfrewshire South) (Lab): On a point of order, Presiding Officer. I wish to raise a point of order about First Minister’s question time.

The ministerial code says that ministers should give accurate and truthful information to the Parliament. The First Minister is fond of quoting Rabbie Burns and, in particular, the line that says:

“facts are chieils that winna ding.”

Well, ding dong, Presiding Officer. Today, the First Minister told the Parliament that college funding had risen from £545 million in 2011-12 to £546 million in 2012-13.

At the Education and Culture Committee meeting on 23 October 2012, a paper was tabled from the Cabinet Secretary for Education and Lifelong Learning. In it, the cabinet secretary said:

“I set out below the information you requested in respect of draft and final college resource budgets for 2011-12, 2012-13 and 2013-14.”

The paper gave the total for college funding in 2011-12 as £555.7 million and the total for college funding in 2012-13 as £546.4 million.

Clearly, the evidence presented by the Cabinet Secretary for Education and Lifelong Learning to the Education and Culture Committee contradicts what the First Minister said in the Parliament today. Both cannot be correct.

For 2011-12, the First Minister gave a figure of £545 million, which did not include any budget revisions. For 2012-13, he gave a figure of £546 million, which did include a number of budget revisions.

The comparison for the £545 million figure for 2011-12 without revisions would have been £507 million for 2012-13—a drop of £38 million. The figure for 2011-12 with revisions is £555.7 million and for 2012-13 it is 546.4 million—a drop of £9.3 million.

The First Minister, rather bizarrely, said today that what he had said was

“as exact an answer as anybody has given in any Parliament”.

God help us if the First Minister of Scotland actually believes that.

The Deputy Presiding Officer (John Scott): You are coming to the end of your three minutes.

Hugh Henry: Either the First Minister made an elementary mistake, not worthy of an esteemed economist such as he is, or he deliberately fiddled

the figures to achieve the answer that he wanted. The Parliament needs to know which it is.

Presiding Officer, I ask that you invite the First Minister to return to the Parliament at decision time to explain whether he made an elementary error and is guilty of misleading the Parliament through incompetence, or whether he deliberately fiddled the figures in order to mislead the Parliament.

The Deputy Presiding Officer: I thank Hugh Henry for the advance warning of his intention to raise a point of order, but I point out, as has been said in the past, that the Presiding Officers are not responsible for the veracity of what is said in the chamber.

Gavin Brown (Lothian) (Con): On a point of order, Presiding Officer. I, too, raise a point of order about accurate information from the First Minister.

At First Minister's question time, Ruth Davidson pointed out that there was a 24 per cent cut to the budget for Scotland's colleges. That figure comes straight from the Audit Scotland report this October entitled, "Scotland's colleges—Current finances, future challenges". On page 3 of that report, under the heading "Key messages", it states:

"Scotland's colleges face considerable challenges in the years ahead. As part of overall public sector spending reductions, Scottish Government revenue grant support to colleges is likely to fall from £545 million in 2011/12 to £471 million in 2014/15. This represents a reduction of 24 per cent in real terms. The sector may also face pressure from a range of increasing costs."

The First Minister said in reply:

"The position that Ruth Davidson quoted ... was ... before Mr Swinney"

made changes.

What changes did Mr Swinney make to the 2014-15 budget exactly? If he is unable to tell us that, will the First Minister admit that, as Audit Scotland and Ruth Davidson say, there is a 24 per cent real-terms cut to the college budget? I invite the Presiding Officer to consider whether the First Minister might be able to correct the record in relation to that comment.

The Deputy Presiding Officer: Thank you, Mr Brown, for your point of order.

Margo MacDonald (Lothian) (Ind): Further to that point of order, I appreciate that I may sound like a gamekeeper turned poacher, but there are other ways in which members can elicit information, accurate or otherwise. I always like to see it in black and white, so perhaps, in the case quoted by Gavin Brown, a letter would be better than coming to the chamber.

The Minister for Parliamentary Business (Joe FitzPatrick) rose—

The Deputy Presiding Officer: I will come to you in a moment, Mr FitzPatrick. I will respond to the points of order. Members are aware that the veracity and content of the First Minister's responses to questions are matters for the ministerial code. As such, it is for the First Minister to respond to any complaint that is made under the ministerial code; it is not a matter for me.

Joe FitzPatrick: We understand that there appears to be a difference between the figures from the Scottish Parliament information centre and Government figures. We are looking into that and we will update the Parliament as soon as possible.

The Deputy Presiding Officer: Thank you very much for that clarification.

Scottish Parliamentary Corporate Body Question Time

14:37

E-petitions System

1. Neil Bibby (West Scotland) (Lab): To ask the Scottish Parliamentary Corporate Body what progress there has been on the development of the e-petitions system. (S4O-01494)

Mary Scanlon (Highlands and Islands) (Con): I thank the member for his question. I know that, as a former member of the Public Petitions Committee, he takes a great interest in e-petitions. He will know that this Parliament was at the forefront of developing an online petitions system.

As convener of the Public Petitions Committee and a member of the corporate body, David Stewart has ensured that e-petition delays and updates have been on our agenda regularly. The original system needed to be upgraded and we wanted not just to replace the old system, but to enhance it. The system that has now been developed delivers improved functionality, including enabling people to create petitions themselves and to have interactive contact with staff to finalise content; improved security features; and improved presentation of petitions together with improved administration tools for the clerking team.

Apart from giving us the opportunity to make improvements to the look and functionality of the system, it also gave us the opportunity to bring the system in-house, as opposed to having it externally hosted at a cost to this Parliament.

Neil Bibby: I thank the corporate body member for that answer. As Mary Scanlon mentioned, I am a former member of the Public Petitions Committee and I have a keen interest in the committee and I am proud of the good work that it does in listening to and engaging with people across Scotland on a significant number of important issues.

I understand that there were difficulties with the development of the new e-petitions system and I am pleased that progress has now been made. What lessons can the Parliament learn from those difficulties and delays and how does it intend to improve the e-petitions system in the future?

Mary Scanlon: I thank the member for his constructive and reasonable question. We recognise that although we now have an improved system, the process of getting there has been far from ideal.

Officials will conduct a full review to see what lessons should be learned from the experience. We acknowledge that the whole thing took longer than had been anticipated, with the result that we did not provide an online facility to enable petitioners to gather signatures and comments between the end of August 2011 and 25 June 2012. Neil Bibby is right that lessons should and will be learned.

The new online system was made available to the public on 25 June. So far, 249 petitioners have created accounts; 70 petitions are being prepared or processed; eight have been published and are in the process of collecting electronic signatures; and a further 16 have been lodged and are under active consideration. Feedback so far has been very positive.

The Deputy Presiding Officer (John Scott): Before we come to question 2, I must say that there are a lot of questions today, so brief questions and answers would be helpful.

Special Dietary Requirements

2. Marco Biagi (Edinburgh Central) (SNP): To ask the Scottish Parliamentary Corporate Body how the Parliament's facilities and services meet the needs of members and staff with special dietary requirements. (S4O-01456)

Linda Fabiani (East Kilbride) (SNP): Our contract with Sodexo requires it to provide a range of dishes for different dietary needs, including vegetarian, vegan, ethnic and health-related requirements. We also label dishes, and have information on our menus and on the intranet.

We have in the past noticed inaccuracies in the labelling and a new process is now in place to avoid that. Our officials are always happy to meet with any member or staff member who has a particular dietary need to discuss how best we can help.

Marco Biagi: I express my gratitude to the members of staff who met representatives from my office to discuss the on-going issues that we have encountered, not just with general catering, but with events and facilities catering.

Would it be possible for the SPCB to incorporate formal groups of building users who have each of the special dietary requirements so that they can be notified of service changes on an on-going basis and provide input into service and menu development?

Linda Fabiani: Yes—that sounds like an extremely interesting idea, and it is always good to have participation from those who use the service. I am happy to have a chat with the Sodexo management and include Marco Biagi in those

discussions to see whether we can find a way forward.

Procurement Policy

3. John Wilson (Central Scotland) (SNP): To ask the Scottish Parliamentary Corporate Body what procurement policy provisions it has made since May 2011. (S4O-01489)

Liam McArthur (Orkney Islands) (LD): A number of changes have been introduced to Scottish Parliamentary Corporate Body procurement policies. For example, in order to build on our efforts to streamline processes and actively remove barriers to participation in SPCB procurement, the use of the Scottish national pre-qualification questionnaire was recently adopted, which is the first step in an overall approach to standardise and simplify the process of selecting prospective suppliers.

The procurement policy manual reflects established public procurement policy and complies with the Public Contracts (Scotland) Regulations 2012. Recent changes that have been made to the SPCB conditions of contract include limiting price increases and taking account of the Bribery Act 2010.

The approach to the evaluation of bidders' economic and financial standing is being reviewed as part of an on-going commitment to increase transparency and proportionality. Responsible purchasing initiatives continue to be developed, which has led to embedding environmental action plans in SPCB high-risk on-site services contracts.

John Wilson: Is there a local labour market initiatives clause in the current procurement policy? Was any such policy considered in the contract that was awarded for the new Parliament security screening facility?

Liam McArthur: I advise John Wilson that the issue of the local content of the work that will form part of the building of the new security screening facility was debated in a number of meetings. We have received assurances from the winning bidder that the amount of work that will be generated through business that is located in Scotland and through sub-contractors will be significant.

We were limited by the way in which procurement law rules out a structure that goes much beyond that, but the issue was certainly a fairly major consideration during our discussions on the contract.

IT Systems (Constituency Offices)

4. Willie Coffey (Kilmarnock and Irvine Valley) (SNP): To ask the Scottish Parliamentary Corporate Body whether it will review the

performance of information technology systems in constituency offices. (S4O-01495)

David Stewart (Highlands and Islands) (Lab): I know that the member has extensive experience and expertise in IT systems from his previous working life.

The corporate body is fully aware of the reliance of members and their staff on effective and efficient IT services in local offices and we are committed to reviewing and, where possible, improving performance. Recent contractual changes provided a vehicle to ensure that all local offices are equipped with the fastest broadband service that their local telecommunications network supports, but it should be noted that the services are delivered over the public infrastructure and, as such, they are limited by the capacity and availability of those common services.

Taking that limitation into account, the business information technology office is working with suppliers to consider what other technologies might be used to improve the performance of the network infrastructure that supports local offices. That work will involve consultation with members and the plan is to pilot potential solutions early next year. To assist with the consultation and other IT issues that members may be experiencing, BIT recently appointed an engagement manager, who will be happy to discuss any aspect of the services that are provided.

If the member wishes to participate in the pilot, I will be happy to forward his name to BIT.

Willie Coffey: I thank my colleague for his detailed answer, and I thank our IT team for their sterling efforts over the past years to try to resolve the performance issues.

However, I do not think that the problems are related to broadband speeds or processing capability in the new computer systems that we give members from time to time. Rather, I think that the problems lie in the levels of security layering in the communications between constituency offices and Holyrood. I would be happy to work with my colleague and others to try to identify solutions and improve the position for all members.

David Stewart: I thank the member for his comments. He is an ideal choice to be part of the pilot, given his technical expertise, and I will be happy to nominate him to BIT.

Alex Johnstone (North East Scotland) (Con): I am concerned that, although the remote access system on which we have relied for the entire lifetime of the Parliament has been fine-tuned, it still relies on network access. Given that new

hardware and software available that would allow us to abandon the system and use a much more reliable one that is not as dependent on network infrastructure, is that something that we should consider so that we can avoid the on-going problem? It has been with us for more than 13 years and it has still not been solved.

David Stewart: I know that Mr Johnstone also has tremendous background knowledge of IT systems, and I would also like to nominate him to form part of the piloting of systems for the future.

IT Performance Issues

5. James Kelly (Rutherglen) (Lab): To ask the Scottish Parliamentary Corporate Body what work is being undertaken to address information technology performance issues in the Parliament and in constituency offices. (S4O-01458)

The Deputy Presiding Officer: There is a similarity in the question.

David Stewart (Highlands and Islands) (Lab): Mr Kelly has also taken a great interest in IT issues—[*Laughter.*] I thank him for his question.

The Scottish Parliament, like most modern organisations, relies on information technology for the effective and efficient delivery of business. The business information technology office is committed to reviewing and, as I said, improving performance. Recent changes to the IT systems have increased the resilience and speed of our voice and data systems, thereby providing greater capacity for internet services such as email, web browsing and remote access, as well as reducing costs.

Contractual changes have provided us with a vehicle to ensure that all local offices are equipped with the fastest broadband service that the telecommunications network supports but, as I said in my answer to Mr Coffey, it is delivered over the public infrastructure and, as such, it is limited by the capacity and availability of these services. However, members have benefited from increased mailbox sizes and improved reliability of remote access solutions.

The Deputy Presiding Officer: I call question 6.

Patrick Harvie (Glasgow) (Green): In a radical change of topic, I ask the corporate body—

James Kelly: Presiding Officer, I did not get a supplementary.

The Deputy Presiding Officer: I beg your pardon, Mr Kelly.

James Kelly: I apologise to Mr Harvie, who was in full flow.

I know that there have been a number of questions on IT, but it is an important subject. The fact is that the reliability, connectivity and quality of the IT service in constituency offices is simply not good enough. As Alex Johnstone said, after 13 years, we are still trying to sort it out.

Having raised this issue previously, I suggest that the IT unit and the SPCB look at best practice in the public and private sector, assess the issues and come forward with a substantive plan that solves the problem. Ultimately, constituents are suffering because of this.

The Deputy Presiding Officer: A brief answer will suffice, Mr Stewart.

David Stewart: The member makes a very strong point. I should note in response to his and previous questions that the Scottish Parliament BIT department benchmarks our work with that of Parliaments in Westminster, Wales and Northern Ireland, but I take on board the comments that the member has made—and has made very well.

Finally, just to put the member's remarks in context, I also point out that we are three staff down in BIT and have lost a considerable number of qualified staff members over the past year.

Members' Staff (Employee Forum)

6. Patrick Harvie (Glasgow) (Green): To ask the Scottish Parliamentary Corporate Body what its position is on recognising an employee forum for members' staff and engaging with it on corporate body decisions that will impact on its members. (S4O-01492)

David Stewart (Highlands and Islands) (Lab): In answering this question, I think it useful to state from the outset that members' staff are employed by individual members, not the corporate body. Individual members determine their own staff's terms and conditions. Of course, if individual members of staff, who are employed by members, wish to set up an employee forum, that is a matter for them. However, given what I have said, it would not be appropriate for the corporate body to engage with such a forum as to do so would confuse the employment relationship between the member and his or her staff.

Patrick Harvie: I am a wee bit disappointed by that answer. Clearly members are the employers of their own staff and I am not suggesting anything that might undercut that. However, where decisions about, say, a change to the Parliament's facilities or even the information technology infrastructure in constituency offices impact on members' staff, is it not reasonable for those staff to have a route to express their concerns directly to the corporate body and be heard? Is such a suggestion not reasonable and modest?

David Stewart: Although I understand Mr Harvie's point, I stress that as an employer of 470 staff we engage very well in collective bargaining with our three trade unions and those staff. The key point is that members employ staff and that it is for MSPs to discuss corporate body decisions directly with them.

The Deputy Presiding Officer: That concludes questions to the corporate body.

Freedom of Information (Amendment) (Scotland) Bill: Stage 1

The Deputy Presiding Officer (John Scott): The next item of business is a debate on motion S4M-04791, in the name of Nicola Sturgeon, on the Freedom of Information (Amendment) (Scotland) Bill.

14:52

The Deputy First Minister and Cabinet Secretary for Infrastructure, Investment and Cities (Nicola Sturgeon): I am pleased to open this debate on the general principles of the Freedom of Information (Amendment) (Scotland) Bill. First of all, I thank everyone who gave evidence to the Finance Committee. I am pleased to note the committee's broad support in its stage 1 report for the bill's general principles. I am particularly grateful to the convener and committee members for their detailed scrutiny at stage 1 and, as I have said, I welcome their recommendation. I might refer to specific points in the committee's report in the course of my speech but, at this stage, I will say that the Government is considering the report very seriously and will respond to all its key points in due course and in light of points made in today's debate.

As members will be aware, the amendment bill has its origins in the desire to right two weaknesses in the Freedom of Information (Scotland) Act 2002. I realise that some might have wanted more extensive reform of the 2002 act but, as the Scottish Information Commissioner stated in evidence to the committee, the Scottish legislation does not need significant correction. I believe that that is a tribute not only to those who were involved in developing the act in the first session of Parliament but to how the act has been implemented by freedom of information practitioners across our public authorities and to its effective regulation by the office of the Scottish Information Commissioner.

In his special report, which was presented to the Parliament in January, Scotland's first Information Commissioner noted:

"Scotland's freedom of information"

legislation

"is widely recognised as being strong and withstanding international scrutiny."

However—and this is an important point—constantly evolving issues around information rights, amid ever-increasing expectations of transparency and openness, mean that we must

ensure that our legislation remains fit for purpose as it enters its second decade.

Willie Rennie (Mid Scotland and Fife) (LD): I hear what the cabinet secretary says about the way in which the legislation was developed in the first place. She is right about that. However, it has been suggested that we should have an almost prospective approach, so that public authorities that are, for example, considering transferring responsibilities to trusts or arm's-length external organisations should, at that point, consider whether the organisation should be subject to FOI requirements. In other words, rather than our making retrospective changes, public authorities should make that judgment at the time, so that we do not always have to play catch-up. Is that something that the cabinet secretary would consider?

Nicola Sturgeon: That is a fair point, and I will consider it. Willie Rennie might be interested in some of the things that I will say later in my speech, which will address some of the points that he is making.

I turn to the part of the bill that deals with historical records. In 2009, the Scottish Government consulted on the proposal to reduce the lifespan of those exemptions in the 2002 act that cannot be applied after a period of 30 years. Although consultation showed broad support for the principle of earlier release of information—which I am sure that all members support—concerns were raised about a blanket reduction for all the relevant exemptions, particularly those that relate to issues of confidentiality.

Exemptions are there for a purpose: to ensure reasonable and proportionate protection for certain types of information. The Scottish Government recognises that in certain cases there may be specific concerns for certain public authorities about reducing the lifespan of a particular exemption. However, it is not currently possible to vary the lifespan of individual exemptions.

The bill proposes to introduce that flexibility so that, wherever possible, the lifespan of exemptions can be reduced while retaining the protection afforded by longer time periods where that is still necessary or appropriate. In the event of Parliament granting that revised power, it is the Government's intention to consult on an order reducing the lifespan of most of the 30-year exemptions at the earliest practical opportunity. I reaffirm that the order will be fully retrospective.

I am conscious of concerns about the potential for complexity in introducing additional lifespans, as well as concern about the impact on resources. Further stakeholder engagement will allow for those concerns to be further explored. However, I believe that the goal of getting more of the public's

information into the public domain earlier is of overriding importance.

Once revised lifespans are introduced, it will be a matter for individual public authorities to decide whether to proactively release historical information or to reactively apply the longer lifespans in response to a relevant request.

It is important to note that, in 2009, while it was not yet a matter of law, the Scottish Government took the proactive decision to routinely open Scottish Government files at 15 years rather than the traditional 30 years. That has put an additional 12,000 files into the public domain years earlier than was originally intended. Doing that has ensured that Scotland remains far ahead of the rest of the United Kingdom. The decision to take that forward-looking step was taken by Bruce Crawford, who rightly observed at the time:

"We are now moving from a period of need to know to a period of right to know."

The information that has been released years ahead of its original opening date has revealed details about some of the key moments in recent Scottish history. Our knowledge and understanding of events such as the introduction of the poll tax, the Piper Alpha disaster and the closure of Ravenscraig have been enhanced by the policy of early release, and I look forward to files from 1997 soon becoming available, as that was the year that heralded the start of the process that led to the establishment of this Parliament.

The second area where the 2002 act has been shown to be unsatisfactory relates to the ability to bring a prosecution in the event of requested information being deliberately destroyed, amended or concealed with a view to preventing disclosure. It is clearly right that those committing an offence under the act are held to account.

At present, such an offence can be prosecuted only within six months of its being committed. Due to the potentially lengthy timescales between request and appeal, it is highly unlikely that an offence that was committed during the initial handling period would be detected and brought to prosecution within six months of its being committed—and if more than six months have passed since the offence, the offence cannot be prosecuted. Indeed, the Information Commissioner estimates that it has not been possible to pursue investigations into suspected offences on eight occasions as a result.

We therefore propose to make the provision more effective by establishing the time limit for bringing a prosecution from the discovery of the offence rather than its commission. It is clearly important that those who seek to frustrate legitimate requests for information can be properly and fully held to account.

I turn to what I suspect is the most controversial part of the bill in order to deal with it openly with the Parliament. The Finance Committee has been strongly critical of the section of the bill that, for shorthand reasons, I will refer to as the royal exemption—the section that would introduce an absolute exemption for information relating to communications with Her Majesty and the heir and the second in line to the throne. I understand those concerns and agree strongly that absolute exemptions should be used only in limited and narrowly defined circumstances, as was the original intention. It is, however, worth recapping the reasons why the amendment has been proposed.

The intention is to ensure appropriate protection for the monarchy. We live in—and, as far as the Government is concerned, when Scotland is independent we will continue to live in—a constitutional monarchy with a shared head of state. Like any head of state, the monarch is entitled to an appropriate level of protection as far as the confidentiality of information is concerned. There is a strong argument that the position of the Queen, as the head of state that we share with the rest of the United Kingdom, should not be compromised by different approaches to the handling of the same or similar information.

That said, I hear and recognise the strength of feeling that has been expressed on the issue. It is the Government's intention to give full and serious consideration to the Finance Committee's report before determining what amendments we will lodge at stage 2. We will look at whether the existing public interest test provides adequate protection, as some have said, or whether any absolute exemption would be better expressed more narrowly than has been the case. I will put forward the Government's view so that the committee can consider it at stage 2.

I turn to the extension of coverage. When I appeared before the committee, there was significant and considerable discussion of the matter. It is an area that many of those who gave evidence to the committee also expressed strong views on. I note all those comments and submissions. Many of the comments that have been made have arisen from a frustration that the power in the 2002 act to extend its coverage has not yet been used by any Administration. It is not correct to say that the range of bodies covered by the act has remained completely static—it has not. The public sector landscape is fluid and on more than 60 occasions changes have been made to schedule 1 as public authorities have been created or dissolved. The power to ensure that the schedule remains current has also been used and is due to be used again next year to bring in the rules councils.

I do not believe that there is a weakness in the strength or scope of the power itself; however, I recognise the concerns that have been expressed around the use of the power. I intend to lodge amendments at stage 2 requiring regular review of the use of the order-making power as well as a widening of the scope of required consultation. Both those amendments were supported and suggested by the Scottish Information Commissioner.

I also reiterate my offer to return to the Finance Committee, at its invitation, to debate the wider issue of extension of coverage and to set out a clear timeline for that work. I am happy, in the context of that work, to give due consideration to the point that Willie Rennie made. I am also minded to produce an order, in early course, to address the fact that outsourcing by local authorities has eroded the protection of freedom of information legislation. I will say more about my intentions in that regard before the conclusion of the bill's progress through the Parliament.

Important though freedom of information legislation is—I made this point to the Finance Committee, and it is a point that I believe in very strongly—we must remember that it is not the only legislative route available to those accessing information. The Government has a notable record of producing legislation and regulation promoting openness and transparency. For example, the Scottish housing charter requires landlords to make information available to their tenants about their decision-making processes and service provision. Those rights are regulated and are enforceable by the Scottish Housing Regulator. Increasing transparency within supply chains for major contracts and capital infrastructure programmes is also a key feature of the procurement reform bill.

Michael McMahon (Uddingston and Bellshill) (Lab): I do not think that anyone would dispute the cabinet secretary's argument on that, but only those who are actively engaged in housing associations and in those technical areas would understand the process by which information could be drawn down via such routes. Given the greater understanding of FOI, would it not be better that the powers be available under FOI legislation?

Nicola Sturgeon: In many senses, that is the point that I am trying to make. It is important to look at the types of information that the public should have a right to access and then take a critical view on what is the best way of promoting that access. It may be better to promote and raise awareness of existing routes to provide that access, or it may be better to use freedom of information legislation. The point that I am making is that we should not necessarily always assume

that the answer is to extend the 2002 act, but, if that is the conclusion, nor should we be afraid of or hold back from doing that. It is appropriate for this Parliament and, indeed, wider Scottish society to have that debate over the next period.

I had hoped to refer to the duties imposed on public bodies under the Public Services Reform (Scotland) Act 2010 and our plans to introduce new record management duties next year under the Public Records (Scotland) Act 2011.

I believe that transparency is not an optional add-on but an integral part of policy making. As the minister responsible for this area of policy, I am committed to ensuring that we look at how we promote and increase transparency not just through freedom of information but generally through our policy-making processes.

In conclusion—I think that I am out of time—the Freedom of Information (Amendment) (Scotland) Bill is an important bill that will right a couple of weaknesses in the Freedom of Information (Scotland) Act 2002 and pave the way for that bigger discussion around the possible extension of the act that I think it is appropriate for us to have.

I am happy to move,

That the Parliament agrees to the general principles of the Freedom of Information (Amendment) (Scotland) Bill.

The Deputy Presiding Officer: We are extraordinarily tight for time today, so I ask members to confine themselves to their allocated time. Mr Gibson, you have nine minutes, including interventions.

15:06

Kenneth Gibson (Cunninghame North) (SNP): The bill amends five provisions in the Freedom of Information (Scotland) Act 2002. In my speech, I will focus on the royal exemption and the extension of FOI coverage.

The committee's approach is set out in our report. I thank everyone who worked with us during our evidence gathering. Clearly, the evidence impacted on the committee, given the conclusions that we reached. The committee was content with sections 2, 3, 4 and 5 of the bill. Due to time restrictions, I cannot detail those provisions now, but they are addressed in our report.

A contentious section of the bill is section 1, on "Royal exemption", which will amend section 2 of the Freedom of Information (Scotland) Act 2002. At present, if a public authority is applying the exemption for information relating to communications with Her Majesty, other members of the royal family or the royal household, the public interest in whether or not to release must be considered. The public interest test is a balance that requires the public authority to weigh

arguments in favour of release against those for withholding. A limited number of exemptions—for example, for court records, national security and defence—are "absolute", which means that the public interest need not be considered. The bill would make absolute those elements of the exemption relating to communications with Her Majesty and the heir and the second in line to the throne.

The Scottish Government has stated that its purpose is to ensure consistency of approach across the UK given the "shared monarchy" and so ensure an appropriate level of confidentiality regarding such communications. The Scottish Government considers it

"vital to ensure that the monarch, as well as the heir and second in line, can operate according to established constitutional conventions."

The cabinet secretary elaborated on those points in her oral evidence, as she did just a few minutes ago.

However, the previous Scottish Information Commissioner held

"significant concerns in relation to the proposal to introduce an absolute exemption ... Absolute exemptions are not regarded as good practice, and I consider this measure to be unnecessary."

The current Scottish Information Commissioner retains reservations. In her submission to the Finance Committee, she stated:

"It is disappointing that Ministers have chosen to retain the amendment".

Unison opposes the provision and is concerned about disapplication of the public interest test. The Campaign for Freedom of Information in Scotland does not believe that the Scottish Government should copy the UK Government.

On creating an absolute exemption, the current SIC emphasised in oral evidence to the committee:

"Making an exemption absolute further undermines and erodes rights to information. It removes from Scottish public authorities, including me and the Government, the flexibility needed to consider the public interest in relation to what can and cannot be disclosed."

She argued that an absolute exemption would be a "retrograde step"—the CFIS supports that view—and, on appropriate protections, that

"there is already adequate provision for the royal family and for discussions that any public authority may need to have that are confidential, are covered by other rights or are a matter of national security."—[*Official Report, Finance Committee*, 12 September 2012; c 1510 and 1515.]

The SIC also said, in her submission, that the measure is

"in **direct conflict** with the public interest, and for this reason I would urge Members to consider carefully whether

such an amendment is desirable and appropriate before proceeding.”

She considered that the exemption

“would have the effect of creating Scotland’s most wide-ranging absolute exemption in terms of its scope.”

On international good practice, the SIC stated that although the Scottish Government argues that the proposed amendment that the bill would bring in aims to create consistency with UK legislation, it will in practice lead to inconsistency in handling requests under Scots law. Requests for environmental information under the Environmental Information (Scotland) Regulations 2004 originate from a European Union directive and contain no specific exemptions for royal communications. Concerns were also raised that the amendment brought in at Westminster was not subject to full scrutiny.

The CFIS said:

“The disadvantage would be that the public would never have the right to know, whereas, at the moment, if there is a public interest, the public has a right to know. The impact would also mean that whoever is writing the correspondence need never fear that it would be made public.”—[*Official Report, Finance Committee*, 12 September 2012; c 1501.]

The evidence submitted against the provision carries weight and authority.

The cabinet secretary said she would

“listen very carefully to the evidence given to the committee.”—[*Official Report, Finance Committee*, 12 September 2012; c 1532.]

Depending on the committee’s report, she said that she would consider whether amendments may be appropriate at stage 2. The committee seeks removal of the royal exemption from the bill, and I am pleased that the cabinet secretary will give further consideration to that.

Extending FOI coverage to public contracts with arm’s-length external organisations featured prominently in a number of submissions, such as those from the CFIS, South Lanarkshire Council, Consumer Focus Scotland, the Scottish Council for Voluntary Organisations, Unison Scotland and the Scottish Trades Union Congress.

As we all know, the power to extend FOI coverage exists under section 5 of the 2002 act. That power allows Scottish ministers to designate public authorities, such as persons who provide a contracted service on a council’s behalf. The issue was the focus of consultations by both the previous Administration and the current Administration. However, even after those consultations, the bill does not address the issue and the Scottish Government has not stated in evidence to the Finance Committee whether—and if so, when and on what—it will introduce firm proposals.

Audit Scotland’s report on how councils are utilising arm’s-length external organisations identified around 130 such bodies, and it is concerned that a consequence of using more complex delivery structures involving ALEOs is that the public may be less clear about who is responsible for services and whom to complain to if they are unhappy. In its report, Audit Scotland stated:

“Maintaining transparency is a key objective in good governance.”

The then Minister for Parliamentary Business and Chief Whip wrote to the committee setting out the Scottish Government’s approach to the extension of coverage. He referred to the House of Commons Justice Committee’s post-legislative scrutiny of the UK Freedom of Information Act 2000 and stated that he was “persuaded” that the UK committee’s position is the right one. That position is that

“openness should follow public money when public services are outsourced”

and that that

“can best be achieved through clear and enforceable contract provisions rather than by designating commercial companies under the Act”.

In response to a question about how the Scottish Government encourages national health service boards and local authorities to prepare such

“clear and enforceable contract provisions”,

the cabinet secretary said:

“With regard to contracts—whether they are NHS contracts with commercial organisations, or those of local authorities or other public authorities—there is a debate to be had about how we ensure that we have the right balance between commercial confidentiality and the public’s right to access appropriate information.”—[*Official Report, Finance Committee*, 12 September 2012; c 1524.]

Discussing the matter with the committee, the CFIS was “not persuaded” by the Scottish Government’s arguments. When asked whether it would “take at face value” the position of the Scottish Government that it will return to the issue of extension should the bill be passed, the CFIS said:

“We are really just fed up waiting. We emphasise that it is not just the current Administration that has broken promises. We still do not understand why, when the bill was published, there could not have been a timeline and a list of specifics. However, even if specific organisations were named, that would not go far enough, because we know from the Audit Scotland report that more bodies will be created in future and that, from our reading, those might not be covered by freedom of information legislation.”—[*Official Report, Finance Committee*, 12 September 2012; c 1506.]

The SIC’s view is similarly clear. She stated in oral evidence:

"I understand the logic of clarifying the act before extending its coverage, but I am disappointed that the opportunity has not been taken to have a discussion about how and to where we should extend it. In not doing that at the same time, we are missing some serious and significant issues, some of which have already been raised in one form or another."

She highlighted that the focus should not be only on which bodies are brought under the 2002 act, but on extending designation

"to include information about public services ... to preserve and enhance people's right to information about how ... public services are delivered."

She also said:

"The designation of some bodies might have been appropriate 10 years ago, but with a review we might find that that is no longer appropriate. The world is changing rapidly, so let us review how bodies are designated."— [Official Report, Finance Committee, 12 September 2012; c 1509.]

In her letter the committee following her oral evidence, the SIC set out three suggestions for amendment of section 5 of the 2002 act: a requirement for routine review of section 5; wider consultation; and consideration of the public interest.

The committee's conclusion on the issue invites the cabinet secretary to detail what action the Scottish Government will take, including stage 2 amendments. I am pleased that the cabinet secretary made it clear in her opening speech that she will reconsider the issue at stage 2.

Examination of the royal exemption provision and extension-of-coverage issues formed the bulk of our stage 1 scrutiny, given the evidence that was presented to us. Those matters go to the heart of the principles of an open freedom of information regime. The committee carefully assessed and reflected on the evidence, and I look forward to hearing members' views.

The Finance Committee recommends that the general principles of the bill be agreed to.

15:15

Paul Martin (Glasgow Provan) (Lab): On behalf of the Scottish Labour Party, I commend the committee for its robust and constructive interrogation of the Freedom of Information (Amendment) (Scotland) Bill. The committee raised a number of important points, on which I will touch later in my speech.

We should acknowledge the history of the FOI legislation and the significant step forward that it represented in making the business of Government and the public agencies connected to it more accountable. For me, as a representative of the Scottish Labour Party, it is also important to recognise that the Labour-led coalition in the

Scottish Parliament and the Labour Government at Westminster introduced the legislation in the first place.

The bill should have been an opportunity for us to reflect on how effective the FOI legislation has been and to consider what could be done to ensure that public bodies are made more accountable, transparent and open. It should have been an opportunity to ensure that the public feel confident that their requests for information are dealt with within the legal framework that was set out in the 2002 act. In reality, however, the bill is a feeble attempt to make it look like the Government is doing something. It lacks ambition.

The Labour Party shares the disappointment that was expressed by a number of those who provided written evidence to, or appeared before, the Finance Committee.

The committee has invited the cabinet secretary to remove the section that allows exemption for correspondence with members of the royal family. The Scottish Labour Party agrees with the committee on that, but the cabinet secretary argues for parity across the United Kingdom.

Bruce Crawford (Stirling) (SNP): Perhaps rightly, Paul Martin gave some credit to former Labour Administrations for introducing FOI legislation. Would he give credit to the Labour Government for introducing on 25 February 2010 an order that gave absolute exemption to Her Majesty?

Paul Martin: The absolute clarity that I would give on that point is that the Scottish Parliament considers legislation in the context of the devolved settlement, which allows us to examine how effective it can be in the Scottish context. It is interesting for a minister who promotes separation to argue for parity across the United Kingdom. The cabinet secretary may wish to elaborate on that in her closing speech.

The argument should be about whether we accept the principle of absolute exemption for the royal family. It is clear that all the evidence that the committee received on the issue points towards retaining the status quo. In the evidence that she gave on behalf of the Campaign for Freedom of Information in Scotland, Carole Ewart provided a reasonable explanation of why the existing legislation has served us well. There is no evidence to suggest that the current system has been abused. I ask the cabinet secretary to reflect on the written and oral evidence that has been given. I welcome her earlier comment that she will do that.

A number of respondents to the consultation on the bill raised concerns about what is not included in the bill. Particular concerns were raised in connection with arm's-length external

organisations and housing associations, and I would like to reflect on my experience of dealing with housing associations as a constituency MSP.

In general terms, I have found community-based housing associations to be more than willing to provide information to members of the public. In my experience, they are usually well managed by local management committees, which ensure that they are transparent and open. However, my experience in requesting information from national housing associations such as Link Housing Association has been more disappointing. Although such associations are recipients of significant sums of public money, my experience is that they operate on the basis not of the public having a right to know but of what they think that the public should know.

The 2002 act provides a legal framework for members of the public, including MSPs, to know what to expect from certain public organisations when they submit a request for information. It is clear from my experience of dealing with the Link Group that the absence of any legislative framework means that it is in control of how and when information is released to me, as the local MSP.

There are opportunities for organisations to consider how they can provide information proactively on the web, so that the public can access it rather than have to request it, but resources are a challenge in that respect. Although I am convinced that that is not the case for larger housing organisations, resources are a particular challenge for smaller housing organisations, and research must be carried out to ensure that smaller organisations are not adversely affected.

I note that the Scottish Information Commissioner suggested that the Government could legislate for a routine review of which bodies should be included within the realms of the FOI regime, and I welcome the cabinet secretary's comments on that. We think that such an approach should be given further consideration.

Nicola Sturgeon: I simply remind Paul Martin of what I said in my opening remarks—that I will lodge an amendment on regular review at stage 2.

Paul Martin: I welcome the cabinet secretary's constructive approach and look forward to scrutinising such an amendment at stage 2, to ensure that it will be effective.

It is disappointing that the Government has attached so little priority to openness and the provision of accessible information. For the Parliament and our democracy to be credible, we must ensure that the information that requires to be provided to us is provided on a right-to-know basis. The law must not be on the side of a

secretive Government that drip-feeds information for media management purposes. That is clearly unacceptable.

We would like to lodge a number of amendments at stage 2. We will support the bill at stage 1 on the basis that significant amendments will be lodged by the Government or Opposition parties and will be accepted.

15:23

Gavin Brown (Lothian) (Con): I, too, thank the Finance Committee clerks and everyone who gave evidence to the committee, whether verbally or in writing.

The bill is short and—in the main—uncontentious. I think that the cabinet secretary was right to say that our freedom of information legislation does not need significant surgery. The two areas of contention have been addressed by every member who has spoken in the debate. One of them relates to something that is in the bill, while the other relates to something that is not in the bill but which some people believe ought to be.

The bill follows one of the Scottish Government's six FOI principles, namely that it ought to adjust the regime when it is necessary and sensible to do so. On the strength of what we have seen and heard thus far, we will certainly support the general principles of the bill at decision time.

Section 1 caused the most debate in committee, and the committee's convener was right to touch on it. That provision is dubbed the royal exemption by all. I find myself in a strange position today. I agree with the UK Labour Party on the point; I disagree with the Scottish Labour Party on the point; I agree with the Scottish Government on the point; I disagree with everybody else on the committee on the point; and I think that I disagree with our Liberal brothers and sisters on the point—I wait to hear what Willie Rennie says but, from what he has said before, I think that I disagree with him, too.

The views on section 1—the royal exemption—were mixed in the written evidence that was given to the committee. A quick tot of the submissions shows that 12 expressed no view, 11 supported the inclusion of section 1, and 14 were against its inclusion. It is fair to say that the views were mixed and were not all one-sided or significantly in favour of one side of the argument.

I was persuaded by points that the Scottish Government and the bill team made to the committee. Andrew Gunn talked about a

“consistency of approach to information relating to communications with Her Majesty, given the commonality of the monarch as shared head of state.”

Zoe Mochrie said:

“I think that it is a reasonable amendment, and our intention is to ensure a consistent approach across the UK with regard to information of similar types.”—[*Official Report, Finance Committee*, 5 September 2012; c 1470, 1471.]

Of course, the monarch has a duty and a right to counsel, warn and advise her ministers, and the royal exemption already applies in Wales, Northern Ireland and England.

John Mason (Glasgow Shettleston) (SNP): I accept Gavin Brown’s point about consistency across the UK, but does he accept that the provision would mean inconsistency with environmental regulations, which are quite different?

Gavin Brown: John Mason is correct to point out that issue, which came up in evidence to the committee. I was left to decide whether I preferred a small inconsistency with one set of environmental regulations or a larger inconsistency on the royal exemption with the UK as a whole. I certainly come down in favour of having the royal exemption, which is the position that the Scottish Conservatives will take on the bill.

It is worth pointing out that, as the Deputy First Minister said in giving evidence, it would be unusual for correspondence from the monarch to the Prime Minister to be treated differently from correspondence from the monarch to the First Minister. On that basis, we accept section 1.

The other sections are probably less contentious. Section 2 concerns refusal notices. Section 3, “Accessible information”, says that when information is “reasonably obtainable” and publicly available it need not be provided in response to a request. That might cut duplication and cost in a small and modest way.

Section 4 relates to historical periods. There is some contention about whether a flexible approach is better or whether a rigid and consistent approach should be taken, but I favour the arguments that the Scottish Government has made. The downside is some inconsistency and perhaps an increase in complexity, but there are different types of information, and the Scottish Government is right to apply slightly different timelines to different types of information, with the overriding proviso that information that can be released earlier should be released earlier. We were given an assurance on that today.

It is clear that the idea of a six-month time limit for proceedings has not worked in practice. When a body has 20 working days to respond to a request, an applicant has 40 working days to ask for a review if they are dissatisfied and a body has 20 working days to issue a review response, it is fairly clear that six months is not long enough.

That was one of the few things that the initial legislation got wrong, so I am pleased to see section 5 of the bill.

My time is running out. I repeat that, come 5 o’clock today, we will support the bill at stage 1.

The Deputy Presiding Officer: We now move to the open debate. I remind members that time is extremely tight. Members have up to six minutes.

15:29

John Mason (Glasgow Shettleston) (SNP): We are hearing from across the chamber that the starting point is that FOI legislation is a good thing and that, on the whole, openness is good and secrecy is bad. Obviously, there can be exceptions, but our starting point should be to presume that information should be in the public domain rather than to presume that it should not be.

In that regard, many good things are happening. Information is released in the vast majority of cases, and I think that more than 70 per cent of the Scottish Information Commissioner’s decisions have been in the Government’s favour. Therefore, I found slightly disappointing both Paul Martin’s tone and his suggestion that the Government is not open. The real debate today is about the fact that organisations that are covered by FOI are generally open whereas organisations that are not covered by FOI are not.

The bill seeks to strengthen FOI in a number of ways, including through a strengthening of the deterrent against the deliberate destruction of information and a reduction in the lifespans of exemptions. I think that most of us welcome those proposals, but there have been areas that have been disappointing to the Finance Committee, civic society and the public at large. We have already heard about exemptions for the royal family. I certainly endorse the recommendations in paragraph 34 of the Finance Committee’s report on the bill. It is good that the cabinet secretary said that she is giving the matter full and serious consideration—that is also mentioned in paragraph 23 of the report—although, personally, I do not get too excited about the royal family.

I want to concentrate more on other organisations, which are covered in paragraphs 57 to 78 of the report. Two main types of organisation might be considered for inclusion under FOI. First, there are bodies that were previously covered by FOI as part of an organisation that was covered by it, such as a council, but then moved out. We call them ALEOs—arm’s-length external organisations—and there are many in Glasgow. Glasgow Life, for example, used to be part of Glasgow City Council and would have been covered by FOI, but it moved out as a separate

legal charity. Bringing that organisation back in would be considered to be returning to the starting point rather than expanding the reach of FOI.

A number of witnesses made that point to the committee. In its submission, Unison said that freedom of information rights should

“follow the money”

and that, if they do not,

“the growing number of public services delivered by private companies and other bodies not currently covered by”

FOI will remain beyond a key tool of scrutiny and accountability. The point has also been made that it could cost more to have organisations not scrutinised than scrutinised. Unison made the point that progressively less information could be available.

Similarly, the Campaign for Freedom of Information in Scotland’s briefing states:

“CFoIS believes the public’s right to know is now far weaker than when FoISA was passed by the Scottish Parliament in 2002 and became effective in 2005. The key reason is that S5 of FoISA has never been used to add/designate more bodies.”

I accept Nicola Sturgeon’s point that there has been a bit of a changeover, but there has not been a major increase in the bodies that are covered up to now.

The campaign’s briefing also states:

“Our ‘information access right’ is strong and enforceable but the range of information we can access is getting smaller as public services are increasingly moved to other bodies and those bodies are not covered by FoISA. CFoIS wants our right to access ‘public information’ to be restored as well as extended.”

That relates to my point about the two types of organisation—restoring the coverage that existed before for some organisations and extending coverage to other organisations.

Should we expand FOI to other organisations? There is certainly an appetite for that in some circles, especially if the organisation receives public funds. For example, Paul Martin mentioned social rented housing. I think that he said that local, smaller housing associations are often quite good but national housing associations are perhaps more doubtful. I would include Glasgow Housing Association as one of the more doubtful ones in respect of how open it has been throughout its life. That seems to be something of an anomaly to me. From speaking to housing associations, it appears to me that some are very relaxed about FOI, and some—I accept—are less so.

Audit Scotland made a good point, which is included in paragraph 64 of the report and which Kenneth Gibson has already quoted, so I will not repeat it. The public are concerned about the

service that is provided but less concerned—in fact, they may be confused—about the legal entity that provides it.

Cost is sometimes raised as a reason for not extending freedom of information, but that is the wrong place to start. Surely, we should first ask whether particular information should be in the public domain and then, if there is a cost, we should ask as a secondary question who should bear that cost. There is broad acceptance that costs should be shared in some way between the person who requests the information and the organisation that is asked for it. That can always be adjusted over time. However, I do not accept that cost should be the starting point in deciding whether access to information should be available.

It has been suggested that ministers already have powers to extend the list of organisations that are included under section 5. I welcome Nicola Sturgeon’s assurance that there will be regular review in future. For me, the key point is that we are looking for the right to get information, not just the possibility that information might be available. One point that came up at the briefing that Willie Rennie hosted yesterday is that there is a cultural problem of secrecy. We really want to change that culture.

15:35

Michael McMahon (Uddingston and Bellshill (Lab)): Not many members would disagree in principle with the Government’s view that there is a need to reform the Freedom of Information (Scotland) Act 2002. However, like the majority of members on the Finance Committee, many members might consider that, having decided to update the legislation, the Government has introduced a bill that is, to say the least, far from adequate.

How strange that the Government started off with consensus and ended up introducing contentious issues that broke the initial accord and went against the will of the stakeholders who supported the proposals in the initial consultation. In short, there was a general desire for FOI to be extended and there was no disposition towards the extension of exemptions, yet the reverse of those positions has been put before us. The Government seeks no extension of FOI to cover arm’s-length organisations, housing associations and a range of other bodies that provide public services, and it has bewildered us all with its aim of extending the exemption from FOI to include the royal family.

In recent weeks, Salus, which is a health board’s arm’s-length organisation, has signed a contract with Atos Healthcare, which has recently come in for a great deal of criticism. Why would

the Scottish Government not want to bring Salus into the ambit of FOI and allow us access to information that might be useful as we deal with issues in relation to the Welfare Reform Act 2012? That baffles me and many other people.

In effect, the Scottish Government has disregarded the views of stakeholders, which, regrettably, is becoming an all-too-familiar habit. For example, in response to the question

“Did you take part in the Scottish Government’s consultation on the Bill and how have your views been reflected?”,

the Campaign for Freedom of Information in Scotland responded bluntly and said:

“Yes, but our views have been mainly ignored.”

That cannot be a good situation to have when we are considering the bill.

The campaign advocates that private and voluntary organisations that receive funding from the public purse should be subject to the scrutiny of freedom of information. Surely such bodies should be subject to scrutiny by the eye of the public whom they serve. I agree with that principle, but the Government seems to have taken a different view.

The Government once advanced the concept of the arc of prosperity, but it now exhibits a predisposition towards the arc of secrecy, which extends from Victoria Quay to the High Court and which will continue to encompass far too many publicly funded bodies. For example, housing associations, which members have mentioned, benefit from high levels of funding from the Scottish Government—or, at least, they used to. If a local authority that builds council housing is subject to freedom of information laws, surely housing associations, which build social rented housing with public money, must be brought under the same scrutiny.

Equally, the basic principle of providing exemptions in a freedom of information bill is not only contradictory but incongruous. As the Scottish Information Commissioner has stated, that

“erodes the right to information enshrined in the Act.”

The bill makes only limited improvements to the Freedom of Information (Scotland) Act 2002. As Unison aptly put it, to fail to extend the act is to weaken it considerably. The Scottish Government has turned what was seemingly a simple and easy job of extending the 2002 act into an overcomplex task.

The Government said in its consultation on independence, “Your Scotland, Your Referendum”:

“We shouldn’t have a constitution which constrains us, but one which frees us to build a better society ... We must

renew democracy and strike a new bond between government and the people based on trust and humility.”

How can the Government renew democracy if it allows organisations that provide crucial public services to continue to remain secret?

The Government must accept the calls from various stakeholders for amendments to the bill. I am pleased that the cabinet secretary indicated a desire to engage in discussion. As the Campaign for Freedom of Information in Scotland said in its submission:

“The ability to exercise our human rights ... is crucial in our modern democracy.”

I am puzzled as to why the Scottish Government appears to be intent on pressing ahead with the bill in a way that is reminiscent of the approach that Westminster took—wrongly—in 2010. The amendments that were agreed to two years ago were not subject to full scrutiny in the House of Lords, due to the imminence of the general election. The House of Lords Select Committee on the Constitution said:

“It is inexcusable that the Government should have taken so long to prepare this Bill that it has effectively denied both Houses of Parliament ... the opportunity of subjecting this important measure of constitutional reform to the full scrutiny which it deserves.”

Why would the Scottish Government take two years to consult, only to make the same mistake that the Lords, of all people, identified at Westminster?

Unison said in its submission that it was

“disappointed that the Scottish Government is making only minor changes via this Bill.”

Unison went on to say:

“the existing legislation is weaker and less clear than it should be for the growing number of public services delivered by private companies and other bodies not currently covered by FOISA.”

I could not agree more. I am not surprised that Unison thought that its views had been disregarded and said:

“Ministers have effectively ignored ours and others’ calls for action on extending the Act.”

The Deputy Presiding Officer (Elaine Smith): The member must conclude.

Michael McMahon: The bill can be saved. We should vote for it today in the hope that the Government will listen to civic Scotland and show that the consultation was not a waste of time and that the bill can be useful.

The Deputy Presiding Officer: I remind members that they must stick to their six minutes.

15:42

Jamie Hepburn (Cumbernauld and Kilsyth)

(SNP): I am a new member of the Finance Committee and I thank my new colleagues for their work at stage 1. I do not have the benefit of having heard the evidence; this is a new subject for me. I am taking part in the debate as much because I want to be better informed at stage 2 and beyond as for any other reason.

I think that most people agree that we need freedom of information legislation. The Scottish Government has six principles on freedom of information, the first of which is that the Government

“Supports Freedom of Information as an essential part of open democratic government and responsive public services.”

If we want active citizens, who have the right to access information, be it information about them that an organisation holds or information on decisions that affect them and society more generally, we must have freedom of information legislation. Such matters should not be under the cloak of secrecy.

We have come some way in that regard, so the bill should not be viewed as revolutionary. The 2002 act changed things for the better and there is much better access to information than used to be the case. I understand that the Campaign for Freedom of Information in Scotland is somewhat frustrated—it will always want to go further on access to information, as is its right—but I cannot accept its conclusion that there is less access to information than there was when the 2002 act was passed, although I agree with it that transparency builds trust and that the ability to access information makes bodies more accountable. It is right to consider the freedom of information legislation.

Willie Rennie: The Deputy First Minister said that as a result of the formation of more ALEOs and trusts there has been an erosion of access to information. The campaign is right to say that less information is available than was the case when we passed the Freedom of Information (Scotland) Act 2002.

Jamie Hepburn: If time allows, I will return to the important issue of ALEOs, which the Finance Committee has been looking at.

I said that the bill is not revolutionary. One of the other principles of the Scottish Government in relation to freedom of information is to operate within the confines of the 2002 act. The bill seeks to build on that legislation.

The committee, rightly, focused on specific areas. However, the explanatory notes to the bill set out that it is intended to address

“the order-making power relating to the definition of what constitutes a ‘historical record’ and the lifespans of certain exemptions”

and

“the ability to prosecute in the event of information not being disclosed due to, for example, alteration, destruction or concealment.”

The 2002 act sets out that a record becomes a historical record after 30 years and sets out exemptions to that. It demonstrates the Scottish Government’s commitment to provision of information that it has, since 2009 as the cabinet secretary pointed out,

“been opening its archive files at 15 rather than 30 years”.

That ties in with another of the six principles, which is to publish information proactively wherever possible.

According to the policy memorandum,

“Some concerns have been raised in respect of the earlier release of ... social work records, adoption records and information bequeathed for research purposes.”

The Scottish Information Commissioner believes that the bill has the balance right, but there are other concerns. The cabinet secretary has written to the committee about this matter: there is a commitment that if the Government seeks to take forward the flexible powers—which I think the cabinet secretary has indicated it will do—they will be subject to consultation. I am sure that that will help to ease concerns.

I agree entirely that a time limit for proceedings should form part of any legislation. As it stands, the legislation is probably somewhat restrictive. It cannot be right that if a person seeks information after a six-month period in which that information might have been destroyed, the perpetrator of that crime would escape justice because no one had noticed that the information had been destroyed. It is absolutely right that we examine that.

Another issue that has attracted a fair amount of attention is the royal exemption. Although I have not heard the evidence, I heard the cabinet secretary say that she is not disposed towards absolute exemptions. I agree with that position and welcome the fact that it will be looked at again.

I will try to respond to the point that Willie Rennie made about ALEOs. I accept that there are concerns. The committee has heard those concerns and committee members have such concerns. Indeed in my area, the local authority is seeking to create a new ALEO on cultural issues. It is right that we look again at the provision; I hear that the Government will do that. I look forward to seeing where that takes us and to the bill progressing to stage 2.

15:48

Iain Gray (East Lothian) (Lab): It is 10 years since we passed the Freedom of Information (Scotland) Act 2002. That hardly made us trailblazers. After all, in the United States, Lyndon Johnson signed freedom of information into law as long ago as 1966. For us, though, it was the right act at the right time.

As many members have said, 10 years on, expectations have grown, the public service landscape has changed and it is right to review the legislation and to strengthen it. The legislation was always a work in progress. Indeed, in 2002, Michael Matheson quoted the Information Commissioner of Canada's having said that in Canada it took 10 to 15 years to break down the culture of secrecy.

Mr Matheson said:

"I believe that such a culture is probably even more deep-rooted in Scotland".—[*Official Report*, 24 April 2002; c 8216.]

We did not realise at the time that that was really a statement of profound self-criticism. The Scottish National Party Government, of which Michael Matheson is a member, has been as guilty as any Administration of resisting the spirit and the letter of the FOI legislation.

Sometimes it has done so spectacularly, for example in court, most recently over legal advice on EU membership, and most gratuitously, in the middle of an election, over local income tax. Sometimes it has done it routinely, such as it did last week, when it refused to tell us whether or when ministers had met the big six energy companies, because they could not find the information in their filing system. Sometimes the Government has done it pretty sneakily, as when e-mails with referendum expert Professor Qvortrup were released, but missing the two key ones, which then slipped out two months later. I say to John Mason that the Scottish Government has also done it pretty systematically, which is why the Scottish Information Commissioner reported that only 50 per cent of requests to the Scottish Government received a full response. That is less than any local authority, some of which respond to 90 per cent of requests.

John Mason: I thank Iain Gray for giving way. He almost seems to be arguing against the 2002 act if he is saying that it is not operating properly as regards the bodies that it covers at the moment. Is that what he is saying?

Iain Gray: No. I am saying that we need the legislation and the culture of openness and transparency, because one will not work without the other.

Of course, when it was in opposition the SNP argued exactly that—that FOI was too restricted. Roseanna Cunningham, for example, railed against class exemptions in 2002, saying that

"exemptions should depend entirely on the content of the information ... being sought, rather than its broad type".—[*Official Report*, 17 January 2002; c 5460.]

Yet here we have the Scottish Government proposing to exempt, as a class, all communications with the royal household. The Finance Committee is right—that provision will weaken the legislation and it should be dropped.

I say to Bruce Crawford that when we brought in the act in 2002, we said that it was stronger than Labour's act in Westminster and we were proud of that. We should still be proud of its being stronger than the UK legislation. I am glad that Mr Crawford has returned to the chamber because I want to agree with him too now, because in 2002 he was very concerned about private finance initiative contracts. He said:

"we cannot see the names of the bidders, the full tender documents or the outline business case in which alternatives were discussed. That is not good enough".—[*Official Report*, 17 January 2002; c 5486.]

One of my constituents recently asked under FOI for an outline business case for the new sick kids hospital in Edinburgh—a non-profit distributing PFI project. I will show members what he received. The crucial financial information—page after page of tables—is simply blacked out. My constituent is an expert in such projects and he is clear that this is not only less information than used to be available in Scotland, but less than he can get out of George Osborne's Treasury regarding contracts in England. The balance between transparency and commercial confidentiality that the Deputy First Minister referred to has shifted, but in the wrong direction. The bill presents the opportunity to change that and to extend FOI to those who provide public services and public contracts, whether they are ALEOs, third sector organisations or private companies.

The month before last, the First Minister said that he would be

"extremely sympathetic"

to such extensions

"once we get the ... Bill through".—[*Official Report*, 20 September 2012; c 11704.]

That sounds a bit like, "Grant me openness and transparency, but not yet," as St Augustine might have prayed.

The Deputy Presiding Officer: You have one minute left.

Iain Gray: I sincerely welcome the Deputy First Minister's far more positive assurances today—

she seems to have much more sympathy for making that extension quickly.

This is our chance to strengthen FOI in Scotland and to extend its reach. Ministers should drop the royal household exemption and at the very least section 5 should be amended to place an obligation on ministers to review the act. I welcome the commitment to do something like that, but would it not be better still to use this opportunity to do so now? That would be the strongest indication that we could give that 10 years on, the culture of secrecy in Scotland is beginning to be definitively uprooted forever, which we could all welcome.

15:54

Bruce Crawford (Stirling) (SNP): I will try to do three things as part of my contribution to the stage 1 debate on the Freedom of Information (Amendment) (Scotland) Bill. I apologise to Michael McMahon and to Jamie Hepburn because I had to leave the chamber for a short time during their speeches. Forgive me.

First, I want to comment on the need to get the legislation in good order before we make any more substantial changes with regard to FOI.

Secondly, I was on the Finance Committee—albeit that it was for only a short time. I can tell the convener of that committee that it was an enjoyable time. I attended only one meeting in private in which the report was being discussed. Had I continued to serve on the committee, I am not sure that I would have wholly agreed with its recommendations and conclusions at paragraph 34 in the report, with regard to section 1. It is much more likely that I would have taken the position that Gavin Brown adopted. I will come back to that later and explain why.

Thirdly, I will discuss when it will be appropriate to consider extending coverage of the FOI regime.

I will start with the issue of getting the legislation in good order, particularly with regard to section 5 and the time limit for proceedings. It is correct that the bill will make the legislation stronger by making more effective the ability to bring prosecution in cases where requested information is deliberately altered, destroyed or concealed. I am glad that the bill proposes that a prosecution be commenced within six months of sufficient evidence to justify proceedings coming to the prosecutor's knowledge, but with the backstop of no proceedings being able to be commenced more than three years after the commission of any such offence. The provisions will update and strengthen the current law and bring the statute book into good order.

Moving on to section 1 on “the royal exemption”, as other members have called it, I am not sure—as I said earlier—whether I would have wholly agreed with the committee's conclusions. The matter is quite straightforward, in my view. It is self-evident, from the media coverage and the particular scrutiny to which the monarch, the heir and the second in line to the throne are subjected, that they cannot be treated just like any other public body and that special provisions are required. While the monarchy exists as part of the constitution of this country, it is essential that its political impartiality not be undermined.

Michael McMahon: Will Bruce Crawford take an intervention?

Bruce Crawford: I hope that all members in the chamber would agree with that, including Michael.

Michael McMahon: I thank Bruce Crawford for giving me the time to say that I do not agree. Why would it be right for the royal family in the United Kingdom to be exempted by devolved Assemblies and the Government of the United Kingdom, while in other countries—such as Australia and Canada—where the monarch is also the head of state, she would still be subject to FOI legislation?

Bruce Crawford: We can all look at comparisons outwith these shores and islands. For example, the President of the Republic of Ireland is included in the FOI regime there for exactly the reasons that I am arguing with regard to Scotland.

There must be a space for the monarchy to be able to provide views candidly to any Government, without the prospect that those views will be put into the public domain, in which case its political allegiances might well be exposed. I welcome what the Deputy First Minister said in that regard.

Iain Gray: I want to return to our own shores. Does Mr Crawford think that the recent court ruling that overturns the exemption for the heir to the throne, and which is still being fought through the courts, rather indicates that exemption on a UK basis may not survive, in any case?

Bruce Crawford: That process is hardly exhausted yet, and the issue is on-going.

On extension of coverage of the 2002 act, the Scottish Government rightly argues that that should be considered only after the legislation has been strengthened by dealing with matters, as the Government plans to do in section 5. As Kenneth Gibson noted, even the Scottish Information Commissioner has said in evidence that she understands the logic of clarifying the act before extending coverage. As members are fully aware, the power to extend coverage of FOI already exists under section 5. That is the correct place in legislative terms for any Government to make that

particular extension. That is why section 5 was drafted in the way that it was when the Parliament passed the bill and it became law. However, I welcome the Deputy First Minister's announcement today with regard to section 5, to the effect that she will lodge amendments at stage 2.

The main point is that we should at present be very careful indeed about considering extension. I support the principle of extending coverage to bodies such as arm's-length organisations that have been created by local authorities—John Mason made a good point about that. There are also strong arguments for extending coverage to public-private partnership and PFI contracts and to some registered social landlords.

However, I question whether, at this time of significant economic uncertainty and pressures on public service budgets, we should add to the burdens on those who are already trying to balance their books in very difficult circumstances. In both the private and public sectors, people are having to take tough decisions day in, day out on where best to apply reducing resources in order to ensure that their businesses can remain trading or that they can continue to deliver their high-value public services.

We can see that there are difficulties in the world economy, including the continuing problems in the eurozone, the problems that the re-elected President Obama is facing with the fiscal cliff and the problems that have emerged this week in the world's third biggest economy, Japan, which is slipping deeper into recession. Those are worrying developments for everyone. Everyone saw the Bank of England's report this week on the state of the economy. We have heard enough in the chamber about the challenges that hard-pressed public service organisations are facing without, at this time, making their lives even more difficult by placing more burdens on them. I therefore ask Parliament to give the Scottish Government a bit of breathing space on the matter of extension of coverage. Now is not the time to add to the burden of either the public or private sector in that way.

The Deputy Presiding Officer: I remind members to use full names.

16:00

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): I start by thanking and congratulating the Finance Committee. The stage 1 reports of committees have always been one of the strengths of the Scottish Parliament compared with other Parliaments, and the report that we are considering shows the committee system operating at its best. I congratulate everyone on that committee.

Various speakers, including Paul Martin and Iain Gray, mentioned the history of the freedom of information legislation. The Freedom of Information (Scotland) Act 2002 is one of several acts that those of us who were in government at the time can rightly be proud of. That does not include only Labour members; we should also pay tribute to the Liberal Democrats, who pushed for the legislation. It was Jim Wallace who took the bill through Parliament, and he famously said during the stage 3 debate:

“Provisions allow providers of services to the public to be added to the bill case by case, and I reassure the Parliament that that power will be exercised.”—[*Official Report*, 24 April 2002; c 8111-2.]

That has been much quoted in recent debates.

In a sense, the main issue that is before Parliament today is what is not contained in the bill. Hitherto, the Scottish Government's view has been that any additions to the bodies that are covered by the freedom of information rules should be dealt with after the bill is passed. I welcome the change of position that the Deputy First Minister announced in her opening speech.

I think that we all know what the problem is. Many bodies have been created over the past few years, particularly by local authorities. For example, Audit Scotland has identified 130 ALEOs, although it has said that it is not sure how many there are overall and there are probably quite a lot that it does not know about. That points to the wisdom of Willie Rennie's suggestion that when a new body is created there be consideration of whether it should be covered by freedom of information legislation.

Various people who have given evidence on the bill have pointed out the failure of section 5 of the 2002 act. That is why amending that section must be a key part of what the Parliament does at stages 2 and 3. As I said, until today, the Government was saying that it was not going to deal with the issue in the bill, but today the cabinet secretary mentioned two proposals that are based on regular review and widening the scope of the required consultation. Perhaps an oddity and a weakness of section 5 of the 2002 act is that, in the case of a new body, consultation is required only of that body, which clearly has a particular interest in the matter. The wider public are excluded.

I welcome the proposals as far as they go, but I wonder whether they go far enough. We are all familiar with the defence that is used in various situations when someone says, “I have reviewed the situation,” and the next statement is, “and I have decided that I will make no changes.” We need to go further than just reviewing the position. I would like to see a purpose section in the bill.

That suggestion has come from the Campaign for Freedom of Information in Scotland, which stated:

“A purpose clause should be introduced to affirm that FoISA provisions are intended to apply to all public authorities and all other bodies providing public services, carrying out public functions and/or functions of a public nature.”

That wording might have to be looked at, but it is important that the principle be enshrined.

Here, of course, I disagree with Bruce Crawford, because I believe that there is an urgent need to get many of the bodies that are not presently covered covered as quickly as possible. The simple principle is that, if a body takes taxpayers' money, it ought to follow the freedom of information rules. As I said, that is the most important issue that is before us. Hitherto, the Government has said that it was not to be considered as part of the bill, but now, fortunately, it will be considered at stage 2 and possibly stage 3.

The only other substantial controversial issue is the royal exemption. I support what my colleagues said about that and I disagree with what the Government has said, although I do not regard the issue as being as important as the previous one that I discussed.

I will not list all the members of the astonishing royal coalition that Gavin Brown referred to, but it has been a matter of slight amusement that the Scottish Government in particular is so anxious to have common arrangements across the UK. As I think Iain Gray reminded us, when we passed our legislation we were quite proud of the fact that it was stronger than the legislation that was passed by the UK Labour Government at the time. If I had been responding to Bruce Crawford's intervention about the action of the UK Labour Government in February 2010, I would have said, “So what?” After all, in a devolved Parliament, we are not bound by the decisions that our party might make in London. I believe that the royal family already has adequate protection and that there is flexibility in the current arrangements for considering the public interest, and sticking with that position will pose absolutely no threat to the royal family.

I can cover the rest of the bill in the 30 seconds I have left, as it contains nothing controversial. The amendment to section 18 of the existing legislation on refusal notices and the amendment to section 25 on accessible information are both without controversy. I support the flexibility that will be given to section 59 of the 2002 act with regard to use of historical information—I am pleased by the cabinet secretary's announcement that she will consult on the matter quickly—and I support the amendment to section 65 on the ability to bring prosecutions if material is destroyed. To be able to bring such a prosecution within six months of the

discovery of evidence is a sensible proposal, but I am not so sure that we need the backstop of three years since commission of an offence.

16:06

Roderick Campbell (North East Fife) (SNP): Information is power—or, as Sir Francis Bacon said, “Knowledge is power”. I am reminded of that and the Scottish Information Commissioner's important role every time I visit the north-east corner of my constituency. The commissioner is, of course, based in the impressive Kinburn castle in St Andrews and employs 21 members of staff, and all of them are very welcome in the community.

First of all, on the royal exemption, the bill's policy memorandum makes it clear that the rationale for introducing an absolute exemption amendment to section 41 of the 2002 act is that in respect of communications with the royal family there should be

“a common approach throughout the UK to the treatment of information relating to Her Majesty.”

At first glance, the proposition seems sensible, particularly bearing it in mind that the absolute exemption applies south of the border as a result—as Gavin Brown's tortured explanation tried to make clear—of the coalition of Labour legislation being brought into force by a Conservative minister.

Nevertheless, responses to the consultation have expressed serious reservations about the necessity for such an exemption. The Scottish Information Commissioner of the time, Kevin Dunion, said earlier this year that he regards the proposal as unnecessary, given the existing provisions in the 2002 act, and sees the amendments as

“somewhat regressive, creating a wide-ranging absolute exemption, which will, in certain circumstances, only be set aside after a period longer than the exemption's current 30-year lifespan, regardless of either the nature of the information, or the strength of the public interest arguments in favour of its release.”

Unison also suggested that the amendments might be contrary to the overall general direction of FOI legislation and, of course, to the objectives of the bill, the principles of which seek to ameliorate the existing legislation. It is worth considering the wide variety of respondents who do not consider the amendments to be necessary.

That said, as was indicated in evidence to the Finance Committee, in practice the existing legislation has had very limited impact in relation to the public interest test. Nevertheless, there is an important principle to be observed, and I am pleased to note the cabinet secretary's indication that the Scottish Government will carefully

consider the Finance Committee's stage 1 report and provide a view in time for stage 2.

With regard to the time limits for proceedings in section 65 of the 2002 act, I agree with the proposal to allow a prosecution to begin six months from the moment that sufficient evidence of an offence is available, with a long stop on commencement of proceedings of three years from the date of the offence. However, it is worth noting that the Finance Committee's stage 1 report states that, in her submission, the Scottish Information Commissioner did not believe that the three-year long stop would be effective because the possibility of commencing proceedings after such a long gap was very remote, especially as evidence of wrongdoing more often than not became evident within 12 months of the commission of the offence.

The Campaign for Freedom of Information took the opposite view on the three-year limit, citing the evidence about Hillsborough that came to light after several decades as a good reason not to impose any backstop. However, I feel that it is in danger of confusing the wider issues with more important issues around criminal and civil liability generally.

On the extension of coverage to ALEOs, the increasing outsourcing of public service provision in Scotland over the past decade, which many members have referred to, has raised some pertinent questions about accountability. In its submission to the consultation on the bill, the monitoring body for services, Consumer Focus Scotland, said that continued delay to extending the 2002 act

"places significant numbers of consumers at a disadvantage."

I agree.

On the question of exercising the powers that Scottish ministers have under section 5 of the 2002 act to add to the scheme bodies and private companies that undertake services for public authorities, I agree with the SCVO for the very good reason that the third sector organisations that provide formal services such as care or maintenance of community spaces should not be included in the extension. However, I agree that an extension of coverage is necessary to reflect the growing use of ALEOs in public service provision. I therefore support calls from local authorities, trade unions and ombudsmen for that extension to be introduced.

Although I am aware of the cabinet secretary's evidence to the Finance Committee that there would not appear to be any advantage in using primary legislation to extend coverage, rather than doing so by order, I hope that, in any event and come what may, early progress is made. I

welcome the cabinet secretary's commitment to regular reviews in that respect.

The bill seeks to amend provisions in the 2002 act for authorities to issue "neither confirm nor deny" refusal notices in relation to requests for personal information. That was, of course, recommended by Kevin Dunion, and I believe that it is a commonsense suggestion.

I welcome the thrust of the bill and look forward to its progress through Parliament.

16:11

Willie Rennie (Mid Scotland and Fife) (LD): I want to make an admission: I am not a royal watcher, and I want to join Gavin Brown's royal coalition. I do not think that the royal exemption is one of the major issues in the bill. I am much more concerned about the other issues, such as the extension, and I think that we should focus on the main thrust of what we are trying to achieve with freedom of information.

We have a serious problem in the public sector, as a culture of secrecy and a kind of game playing are developing in many organisations, from the police to the NHS to central Government. We need to address that because, if we do not, it will undermine the whole FOI regime.

In recent months, we saw how Rab Wilson did great work in using information gained through FOI to expose a major flaw in Ayrshire and Arran about learning lessons from deaths. There could not be a better example of the use of the FOI regime. It is not just for journalists and politicians who want to get one over on someone; it makes a real difference to people's lives. That is why it is important that we address the erosion that the Deputy First Minister spoke about.

John Mason: Does the member think that legislation will be sufficient to change the culture, or do we need to do something else?

Willie Rennie: Both things are necessary. We need to send a clear signal that we are not suspicious of or cautious about freedom of information and that we welcome and embrace it. The bill gives us an opportunity to do that. However, we have to ensure that management understands the position. I have heard lots of different examples of people trying to play games and withhold information. We need to encourage people to be much more open so that we can learn lessons from our mistakes.

We need to address that issue because, as the Deputy First Minister has said, there has been an erosion. Lots of public money is now no longer under public scrutiny. The public can access information about Barlinnie, but not about Kilmarnock prison. Tenants in South Lanarkshire

can get information about their landlord, but Glasgow tenants cannot, because their landlord is a housing association. In East Lothian, responsibility for leisure facilities was transferred to an arm's-length organisation, which meant, again, that the information was not available. Those are examples of the issues that we need to address.

I was pleased with the tone of the Deputy First Minister's comments. I welcome what she said about there being an annual review. I hope that that is followed through quickly so that there can be a regular review and we can deal with the many organisations that have now fallen outwith public scrutiny.

However, I disagreed whole-heartedly with Bruce Crawford's remarks about the economy. It was an argument almost against freedom of information. I know that he endorses FOI, but to argue that there are certain circumstances—including those that involve the economy—in which it should be suspended is not worthy. We need to embrace it. It is an issue that helps us to learn how to govern properly and no excuses, including the economy, should be used. FOI should be seen not as a burden, but as an opportunity.

There is an opportunity in the bill to make the necessary changes. I have suggested that there should be an opportunity for public authorities to make a designation at the time of the creation of new bodies, when they could consider whether they should be included in the FOI regime. That would mean that we would not have to play catch-up on an annual basis or even more frequently. We need to create the opportunity for that to be done at the time, which will require both an amendment to the bill and the annual review that the Deputy First Minister talked about.

The Deputy First Minister also mentioned the need to consider other avenues for public access to information. Kevin Dunion has commented on that. He said:

"My second concern is the view being expressed that other initiatives can improve access to information held by those bodies, so that designation is not necessary. However welcome efforts at greater transparency may be, none can provide the benefits of FOISA, namely a statutory right to information and in particular the right for a dissatisfied requester to appeal to the Commissioner."

That process is well known, well tried and well tested. People know that they can use freedom of information legislation to get access to information. Other members, including Michael McMahon, have commented that the other mechanisms are not as tried and tested and that people are not as familiar with them.

I think that we should stick with what works. We should extend the coverage so that we make

steps back to the ground that we have lost in recent months. Iain Gray is right when he says that there has been a loss of confidence in the Government on freedom of information because of numerous episodes, many of which he referred to. The one thing that the Government could do to dispel that perception is change the bill in the way that I have described and extend the coverage so that we can get the principle of following the money. If public money is involved, people have a right to know.

16:17

George Adam (Paisley) (SNP): I, too, thank the Finance Committee for all the work that it has done. In particular, I thank the convener, Mr Gibson—and not just because he is sitting beside me. Although I am not on the committee, I have followed its proceedings with interest. The cabinet secretary said in her opening remarks that there is the potential to take on board some of the committee's concerns, and I welcome that.

As the debate has shown, there is no quick fix to what is quite a complex situation. Various examples have been cited. For example, Prime Minister Blair was a keen advocate of freedom of information when he was the leader of the Opposition, but in his memoirs he described the 2000 act as an act of stupidity "undermining ... serious government". I am not saying that Tony Blair is a perfect human being and a perfect example of someone using FOI—we are aware of his faults—but I understand that FOI is an extremely complex issue to discuss and enforce.

The bill amends the provisions of the Freedom of Information (Scotland) Act 2002 relating to various exemptions. The debate has concentrated on the royal exemption, which is probably one of the most contentious issues. As Kenny Gibson mentioned, Kevin Dunion, the previous Scottish Information Commissioner, said:

"Absolute exemptions are not regarded as good practice, and I consider this measure to be unnecessary".

Although my gut instinct is to go with the idea, I understand that, as the head of state, the Queen is probably—as Bruce Crawford said—in a similar situation to the President of the Republic of Ireland, who is not subject to the FOI regime over there. It is not quite as black and white as it is for everyone else.

Kenneth Gibson: The exemption applies not just to the monarch but to the heir to the throne and the second in line to the throne, so I do not think that there is an Irish equivalent.

George Adam: That is a whole different debate. Having said that, I agree that the situation is complex and that there are things that we need to look at. I welcome the flexibility that the cabinet

secretary offered in her opening remarks. The Government has taken very seriously the committee's report, as today's debate shows.

I agree with the cabinet secretary that the reduction in the lifespan for historical records needs to be a lot better, but I can understand how difficulties can arise.

From my working life—my time as a local authority councillor—I would say that an extension to coverage is required to include some of the public organisations that have been mentioned, such as various ALEOs. My council did not have an ALEO, but I am only too aware that, where an agency has opted out of council control, in effect it may be required to give information under FOI one day but not the next. Obviously, that causes problems with regard to transparency. I also have concerns about housing associations, which I think should be covered by the legislation. We need clarity in all forms of public life.

A particular worry for me relates to PPP/PFI contracts, which were mentioned by Mr Gray and others. There are situations in which we should have an opportunity to see exactly what has happened, but we have to balance that against the need to ensure commercial confidentiality. As someone who was a councillor member of various boards, I am only too aware how situations could arise in which the information that could be given on a procurement contract related only to the alleged points system; that was quite confusing, so people could not understand how it happened that someone was given the contract. That can cause difficulties.

Iain Gray: Does Mr Adam support my view that the outline business case for the sick kids hospital in Edinburgh should be released so that we can see the affordability and the basis of that project?

George Adam: As I said earlier, there needs to be a balance in everything. I do not know all the information on that project, and I would need to know more about what has happened there before I committed myself on the record.

On the issue of other organisations that could perhaps be brought under the bill, my council was a constituent member of Strathclyde Partnership for Transport, but as a councillor I could not get information on how much we got for our £3 million—money that was top-sliced and taken away every single year—even when the issue was brought before Renfrewshire Council's scrutiny board.

I welcome today's debate and the generally positive way in which it has been conducted. This is a serious and complex issue and, as such, there are no easy fixes. We need only remember that Tony Blair believed in FOI in opposition but then believed that it was an act of complete stupidity

that undermined serious government. Such serious and complex issues need to be debated in an open and transparent manner. I look forward to stage 2 and to seeing how the bill develops.

The Deputy Presiding Officer: I am afraid that, from now on, I can give members only four minutes.

16:23

Alison Johnstone (Lothian) (Green): It has been 10 years since the Parliament passed our freedom of information laws, and the world in which Government and local authorities could withhold information at will is long gone. It is important that we acknowledge our significant progress on openness, but FOI also has its limitations. As others have said, in some places there is still an unnecessary culture of secrecy, even when there is nothing to hide.

The bill will make some welcome changes to the law, such as the ability to vary the lifespan of historical records and the changes to timescales for prosecution, which also make sense given that the crimes might go unknown for a significant time. Less welcome is the inclusion of an absolute exemption for royalty. I agree with the Finance Committee that that proposal should be removed at stage 2 and I support its invitation to the Government to do that. The current set-up, in which the information can be released if it is in the public's interest, seems to me to be the correct way to have the law structured in a modern democracy.

The Information Commissioner has argued strongly against the practice of absolute exemption under FOI, and others have made the point that even if the legislation goes through as introduced, it will not cover environmental information—if the letter to the Queen is about the environment, it will not be exempt; if it is about anything else it will be—and that is inconsistent. As Gavin Brown acknowledged, that does not assist public understanding.

The fact that section 5 powers to safeguard people's right to know by designating new public bodies have not been used as we might have expected them to be has also dominated discussions. Some new bodies have been covered, such as the Scottish Human Rights Commission, which has FOI in its primary legislation, but in many cases the creation of new bodies, such as arm's-length organisations, and the privatisation of public services have led to an erosion of people's right to know.

The Information Commissioner stated:

"Since FOISA came into force in 2005, 15,000 households have lost FOI rights as a result of the transfer

of local authority housing stock.”—[*Official Report, Finance Committee*, 12 September 2012; c 1510.]

That sort of change is quite natural over 10 years, but section 5 designations are designed to address that. As discussed, the Campaign for Freedom of Information in Scotland is calling for an amendment at stage 2 to require ministers to have regard to public views when consulting on new section 5 designations, and not just the views of those organisations affected. It is also seeking an amendment to create a recurring requirement for Parliament to consider any new bodies that are created, every year or two years, to ensure that we do not see another decade of little action.

I welcome the cabinet secretary’s commitment to introduce regular review at stage 2, and to address the issue of public consultation. Willie Rennie’s comments about automatic application are certainly worthy of consideration.

It feels as though now is the time to extend FOI’s coverage. The public desire is there: more than 80 per cent of people surveyed want FOI to be extended to cover new public services, and a vast 91 per cent value the right to know.

I welcome the SCVO’s clear statement this week that it supports the extension of FOI to include all public services, whether they are delivered by public, private or third sector organisations, and its views that the public have a right to know all aspects of how public services are funded and run. Like Willie Rennie—and contrary to Bruce Crawford’s view—I do not believe that economic circumstances should curtail access to, and the safeguarding of, the right to know. We should have the right to information from a company that is building a local school or about a regional hospital that is being built under PPP; we should be able to scrutinise the Convention of Scottish Local Authorities; and we should be able to FOI the companies that are running Scotland’s privately managed prisons, Serco and Sodexo. Of late, we have even privatised the maintenance of our nuclear weapons at Faslane and Coulport—such contracts should remain transparent.

16:27

Chic Brodie (South Scotland) (SNP): I planned to support the motion with one caveat, but the cabinet secretary’s opening speech has removed it. Freedom of information legislation—or amendments to it—works only if it faithfully confers on the public the right to ask for and receive, timeously, data held by public bodies.

Evolution in the political practice and landscape, in our media and, indeed, in technology, demand that our information laws and amendments thereto secure the right of access by our citizens to relevant public information. Important selective

exemptions—but not too many—from disclosure should, of course, protect only essential Government functions, including international diplomacy, defence, personal information or specific confidential advice. I support Bruce Crawford’s earlier comments about commercial information, which would require a much longer and detailed debate.

In subscribing to the principles of the bill, it is important that we note that only a small percentage of Scots filed FOI requests last year. Notwithstanding that, it is pertinent that we review and amend an act that is now in its 10th year. It is appropriate to consider changes to the terms of the longevity of a particular historical record, as it is to pursue those who do not provide data by destroying or concealing it; that practice is unacceptable.

I had been motivated to support the general argument and thrust of the Finance Committee’s observations about creating too many exemptions, even—and particularly—in the case of the Queen and heirs to the throne, but that might defeat the general principles inherent in the original act.

I refer again to the scope and range of FOI requests, which I mentioned earlier. In particular, that applies to royal communications, which have been barely requested, notwithstanding the current request regarding the heir to the throne. Therefore, I welcome the cabinet secretary’s commitment to consider the matter appropriately and the fact that the Government will try to seek convergence with the Westminster Government on it for reasons that other members have covered.

Having recently made an FOI request for data that is some 30 years old and not yet having succeeded in getting it, my initial reaction to the amendment to the power to vary periods for historical records under section 57 of the 2002 act was to oppose the change. However, I endorse the Government’s intention to amend the lifespan of time-limited exemptions but secure flexibility in certain cases—including, I hope, mine.

I also support the Government’s position on the time limit for proceedings that are brought in cases in which the destruction of data thwarts the seeking of information or the disclosure of data. We need a change in our culture and in our approach to information.

Given all the above, the amendments to the legislation that are proposed in the bill take us even closer to the objective that we all seek: a much more open society.

16:31

Jean Urquhart (Highlands and Islands) (Ind): As a member of the Finance Committee, I am

pleased to have the opportunity to comment on the bill at stage 1. I echo the comments of my fellow Finance Committee members in agreeing with the general principles of the bill but with caveats.

The two provisions that have gained the most attention and that the Finance Committee's report is most vocal in questioning are the absolute exemption that is proposed for communication with some members of the royal family and the extension of coverage to organisations that receive public money.

Currently, a public interest case must be made for the disclosure of communication between certain members of the royal household and the Government, and I cannot see how removing a public interest test is itself in the public interest. In addition, the committee heard during its evidence taking that the absolute exemption would, in fact, create a new anomaly, due to the fact that the EU directive on environmental information contains no specific exemptions for communications with the royal family.

As the equivalent measure that was introduced at Westminster was rushed through that Parliament in 2010 with little scrutiny, perhaps the rest of the UK should bring its legislation into line with Scotland's, rather than Scotland regressing to come into line with the rest of the UK.

An equally pressing concern relates to how the public are able to scrutinise private companies that are awarded public contracts. It is vital that the public be able to find out how and where their money is being spent. Otherwise, we risk FOI avoidance sitting alongside tax avoidance in being a legal, yet ethically wrong, practice.

I acknowledge that the Government has said that it intends to examine extending coverage at some point, but I consider it a matter of urgency that arm's-length external organisations—of which there are roughly 130—be designated under the existing FOI legislation. I agree with Willie Rennie's suggestion that we are worse off than we were 10 years ago as a result of the creation of the ALEOs removing an enormous amount of public expenditure into organisations that are exempt.

The public have a right to be able to follow the public pound, and I suggest that, at some point, somewhere, there should be a recommendation that any organisation that picks up public money should offer up the information at its own hand. Because we have to challenge and go through the freedom of information legislation to get information, there is an assumption that something dodgy is going on and that the companies have something to hide. However, if the information was put on websites or made available to the public

more easily and, I hesitate to say, at less cost to everybody concerned, there would be less need for the legislation.

I back the general principles of the bill but, once again, state my preference for changes to be made when it returns to the Parliament for its second stage.

The Deputy Presiding Officer (John Scott):
We move to the closing speeches.

16:35

Gavin Brown: We have had a pretty good debate, which has focused mainly on the royal exemption and the extension of coverage. There has been a lighter-touch examination of sections 2 to 5, but that was to be expected, and it reflects the Finance Committee's report to the Parliament.

As far as the royal exemption is concerned, although the bill will be agreed to at stage 1 unanimously, or almost unanimously, it would be interesting to know which way a vote on section 1 alone would go. I have tried to do a quick calculation based on the views of the members who are present, but I simply do not know which way such a vote would go, were it to be held today.

It is worth reiterating that there were mixed views on section 1 in the written evidence that the committee received. The position was not as one sided as it might appear. Although absolute exemptions are not the norm, as the cabinet secretary said, if they are to be provided, they ought to be limited and narrowly defined. One could argue that section 1 is pretty limited and exceptionally narrowly defined.

I acknowledge, in particular, Bruce Crawford's contribution. I fear that he left the Finance Committee far too soon; he certainly left it a week too soon for my liking.

Jamie Hepburn: Could the member explain what he means by that?

Gavin Brown: We had cotton replaced by silk.

A point that was made on the royal exemption is that it was rushed through at Westminster in 2010 because of the impending general election. There is a degree of truth in that—from the point of view of timelines, the progress of the relevant legislation was faster than one would normally expect.

However, it is worth reflecting on the fact that the amendments that brought in the royal exemption were lodged by Jack Straw, who was the minister who brought through the original freedom of information legislation not long after Tony Blair became Prime Minister. During

consideration of the Constitutional Reform and Governance Bill, Mr Straw said:

“There were lacunae—I confess that I am the Minister responsible—not in the intention of the Freedom of Information Act, but in its drafting that have raised some uncertainties about the protection of the monarchy in relation to national records.”—[*Official Report, House of Commons*, 2 March 2010; Vol 506, c 830.]

The fact that there were gaps in the original legislation probably led to some of the court cases that Iain Gray talked about. The purpose of the bill—as with the Constitutional Reform and Governance Act 2010—is to ensure that there are no gaps and that the law is absolutely clear.

The other big issue that has been discussed is the extension of the coverage of freedom of information. It has rightly been pointed out that the power to extend coverage already exists under section 5 of the 2002 act—the current Government has it at its disposal, just as the previous Executive did. The fact that it has not been used does not mean that it is not fit for purpose or that it does not exist, as some have argued; it is simply the case that it has not been used since it became available.

I would be slightly uncomfortable about having a list of bodies to which coverage should be extended on the face of the bill; I am not sure that that would be a good way to proceed. As far as I am aware, that is not something that has happened with freedom of information legislation in this country or anywhere else. I think that the right approach is to get the bill through Parliament and then, quite quickly, to look carefully at who ought to be covered and who ought not to be covered.

Willie Rennie: I am not sure that anybody suggests that the bill should contain a list of organisations. I talked about a purpose and about public authorities being able, when creating a new body, to determine that it should be included in the regime. I did not suggest including a list in the bill.

Gavin Brown: My remarks were not specifically addressed to Mr Rennie. However, from the written and oral evidence to the committee, I thought that some people felt that a list of bodies should be in the bill. In any event, I do not think that the bill should contain a list.

I strongly welcome the Deputy First Minister's comments. She did not say just that amendments might be lodged; she positively indicated that amendments would be lodged on who should be consulted about the bodies that should be covered and on having a regular review, so that the power, which has existed for some time, is used continuously. The more specific we can be about the timeline, the better it will be for the passage of the bill at stages 2 and 3.

I am happy to leave it at that. I repeat that we will support the bill at stage 1.

16:41

James Kelly (Rutherglen) (Lab): I welcome the opportunity to close the debate on behalf of the Scottish Labour Party, which will at 5 o'clock support the bill's general principles at stage 1.

I thank the Finance Committee for its detailed work in considering the bill. There is no doubt that there has been criticism recently of how some committees have gone about their work, but none of that criticism could be levelled at the Finance Committee for its work on the bill. It is clear not only from the report but from the thoughtful speeches that many committee members have made that they took their job seriously and interrogated the bill robustly.

As Michael McMahon said, there is no doubt that the bill makes some pretty minor technical changes. With the exception of the royal exemption, the basic points of the bill are the subject of broad agreement. Nobody will disagree with proposals to tidy provisions on historical records and the lifespan of exemptions. As Jamie Hepburn pointed out, it is logical for the six-month period in relation to offences to start when evidence is amassed rather than when an offence was committed. Such changes are logical and I do not think that people will disagree with them.

Willie Rennie and Iain Gray pointed out an issue with the current legislation. There is no doubt that some organisations and public bodies are getting expert at dealing with FOI requests and can release the minimum amount into the public domain. A great concern is the example that Iain Gray gave of a contract document in which the financial information was redacted. That does not represent the intention of the original legislation.

A number of members, including Paul Martin, have argued that the bill is at this stage a missed opportunity. We should look at extending the legislation to other organisations and to ALEOs. As Jean Urquhart said, there are now 130 ALEOs. As John Mason demonstrated, the nature of the public sector has changed quite a bit in recent years, and the FOI legislation must change to keep up with that.

Such points are important, and I note that the Deputy First Minister gave a commitment to look at them at stage 2 and said that she would want to see whether amendments would make the bill more fit for purpose.

The issue that has caused most discussion in the debate has been the royal exemption. I suppose that we must wonder why the Government adopted a royal exemption at stage

1. I think that it has viewed the matter through the prism of the independence referendum. From what the SNP has done over the past year, it is quite clear that it has tried to adopt a more cautious approach in order not to scare the voters. It has told them that Scotland would keep the pound and would still be wedded to the Bank of England. Alex Neil even said that we would still be British even if we voted to be independent.

The SNP has adopted this proposal. Who would ever have thought it? The Deputy First Minister is cuddling up to the British establishment. The SNP thought that adopting a more cautious approach might appeal more to the voters, but it is clear from the speeches by some of its back benchers that that is not a uniform view in the SNP. As Jean Urquhart pointed out, the public interest test will remain in the legislation, and I think that that will give adequate protection to the royal family.

Jamie Hepburn: When Gordon Brown instituted his absolute exemption for the royal family, did he do so for electoral gain?

James Kelly: It is good to see that Mr Hepburn has joined the Finance Committee. It is clear that he has been put on that committee to join forces with some of the other members of the awkward squad on it and to give some difficulty to the SNP.

As Iain Gray pointed out, one of the fundamental problems that undermine the SNP's credibility over the bill is the clandestine approach that it has recently adopted. Some £100,000 has been wasted in challenging the release under FOI of information relating to plans for getting rid of the council tax and replacing it with a local income tax. That was a waste of public money. In recent weeks, there has been the controversy over the challenge to the release of EU legal advice. That advice was non-existent, but the Government went to court and wasted £12,000 of taxpayers' money on that challenge. There was no need for that. That undermines the Government's credibility. We saw the same again today with the First Minister—I see that he has come to the chamber—not being accurate with his figures.

Questions remain for the Government about its approach to transparency and openness that need to be addressed if it is going to retain the trust of the public.

16:48

Nicola Sturgeon: I was going to say that the debate has been good, but it was good until about the previous two minutes. Paul Martin made a good speech, and there were excellent speeches by Kenny Gibson, Gavin Brown, Jamie Hepburn, Bruce Crawford, Malcolm Chisholm, Rod Campbell, Chic Brodie, George Adam and other members.

Michael McMahon made some good points, but he probably got his tone a bit wrong. If he had listened to my opening remarks, he might have found that I was more in agreement with him than he might have suggested in his speech, and he might have decided that the angry tone was not the correct one. There was something quite ironic in listening to him lambasting the Government because ALEOs are not under the ambit of freedom of information. I recall that it was Labour-controlled Glasgow City Council that was the pioneer in setting up those arm's-length organisations in the first place.

Likewise, Iain Gray made some good points, but at times he was at serious risk of losing those points among the usual overblown spleen venting about the SNP that has become the hallmark of those on the Labour benches.

Iain Gray: Will the cabinet secretary give way?

Nicola Sturgeon: For some more spleen venting, yes.

Iain Gray: As I said to John Mason, it is a simple fact that only 50 per cent of FOI requests to the Scottish Government are responded to in full, whereas some local authorities achieve 92 per cent. Surely that simple fact must say something about the culture in the Scottish Government.

Nicola Sturgeon: It is also a fact that a significant proportion of all freedom of information requests that come to the Scottish Government come from Labour members or those who are associated with them.

I turn to a serious point. Willie Rennie said that the public sector in general in Scotland is developing a culture of secrecy. I do not agree. One can believe, as I do, that freedom of information has been eroded to an extent because of the change of structure through organisations such as ALEOs without coming to the conclusion that that is somehow part of a culture of secrecy. However, if Willie Rennie is right, it is incumbent on us all as politicians in the Parliament to consider our role in that and in the solution. Increasingly, on all sides, freedom of information is being used not as a legitimate attempt to get information but as a weapon in the broader political war. We must all reflect on that if we want to change the culture to which Willie Rennie referred.

I will address the two key themes of the debate. One has been the royal exemption. Access to information laws, whether ours or those elsewhere, commonly contain protection for a head of state, whether by exclusion or exemption, although I accept that not all countries do that. I have listened carefully to the comments and, as I said earlier, I will carefully consider the Finance Committee's report. First and foremost, freedom of

information is devolved legislative policy that lies solely in the hands of the Parliament, so our FOI law should reflect our needs and requirements. Kenny Gibson listed many of those who think that the proposed amendment to the legislation is too broad in scope. I am sympathetic to them, and I will give serious consideration to the committee's report and to the comments that have been made in the debate, with a view to lodging amendments at stage 2.

Interestingly, a couple of members referred to the fact that section 1, if it was agreed to, would create an anomaly with environmental regulations. I accept that, but, as things stand, there are many anomalies between freedom of information law and environmental regulations. It is perhaps ironic, given that we are talking about a proposed absolute exemption, that one way of dealing with the anomalies would be to have an absolute exemption under freedom of information legislation for requests for environmental information, thereby ensuring that such requests were always dealt with under environmental regulations. Who knows? Perhaps there is a back bencher will want to lodge an amendment to that effect at stage 2 to deal with the anomalies between the two regimes.

The extension of coverage has been central to the debate. It is incorrect to state that coverage remains as it was when the 2002 act came into force, and I am sympathetic to those who are concerned about the lack of use of the order-making powers in section 5 of the act. I do not believe that the power is unfit for purpose, but I am persuaded that there is not enough obligation on ministers to regularly assess its use or to ensure that sufficient breadth of opinion is taken into consideration when consulting on that. As I said earlier, we will introduce amendments to section 5 of the act before stage 2. We will build in a regular review, as the Scottish Information Commissioner has proposed.

As I have repeated on several occasions, we will return to the issue of extension once the bill has completed its parliamentary stages. I look forward to engaging further with the Finance Committee in setting out a timeline for that work. John Mason was absolutely correct when he said that there are two categories. First, there are functions that were previously subject to FOI but, because of outsourcing, are no longer within its ambit. Secondly, there are organisations that would come within the scope for the first time. I believe that, for some organisations—culture and sport ALEOs being the obvious example—the argument in favour of inclusion is clear cut, but other cases are more open to debate. We should have a debate and a staged approach that ensures that we do not hold up action where it is necessary and required while we consider our approach in other areas.

Willie Rennie: The cabinet secretary implied that she is not in favour of considering an approach whereby there is a pre-ruling on FOI by public authorities in relation to new organisations that are being considered or created. Is she ruling that approach out or will she consider it in future?

Nicola Sturgeon: I thought that I made it clear when I responded to Willie Rennie's intervention during my opening speech that I am happy to consider the approach, either in the context of the bill or, if that cannot or should not be done, in further work that we take forward. I am more than happy to give open consideration to the matter.

This has been a good debate. There has been a considerable degree of interest and important issues have been raised. I look forward to continuing to engage with members of all parties and with the committee as we go through the further stages of the bill.

Points of Order

16:55

The Deputy Presiding Officer (John Scott): Before we move to decision time, I return to the points of order that were made earlier. The First Minister has requested the opportunity to respond to the points that were raised.

The First Minister (Alex Salmond): Thank you, Presiding Officer.

In response to the points of order that were made earlier this afternoon, I would like to clarify the Government's position regarding college funding, to which members have drawn attention.

At First Minister's question time earlier this afternoon, I quoted a figure of £545 million for the year 2011-12 in revenue funding for the colleges. The figure that I used was provided to me and it was used in good faith. However, it failed to take account of budget revisions to college funding.

There was no intention to mislead. Indeed, that can be seen and is demonstrated by the fact that the Cabinet Secretary for Education and Lifelong Learning, in a letter to the Education and Culture Committee on 23 October, set out the correct figures. Those are: £555.7 million in 2011-12 and £546.4 million in 2012-13. The difference between the figures is £9.3 million, which equates to 1.7 per cent of the half-billion 2011-12 college budget.

I will place the table from which I was quoting in the Scottish Parliament information centre, and members will see that, of the various figures that I quoted, only the 2011-12 figure was incorrect. The figures that I quoted for this year and for next were correct.

I turn to the point that was made about the Audit Scotland report. The figure for 2011-12 that Audit Scotland used in the report of 18 October excludes the budget revisions made after the spending review was published. Also, we have yet to announce revisions for 2014-15, if any. Therefore, by definition, it is not possible to calculate what the final position will be. However, the comparison can be made between the three years that are set out in the education secretary's letter of 23 October to the committee.

I can confirm that the cabinet secretary will shortly write to the Presiding Officer, apologising and making clear his regret at using the same figure as the basis for an answer to Mr Malik on 28 June.

I make it clear that I take full responsibility for what I say in this chamber. Therefore, I have taken this earliest opportunity to correct the figure. The figure should have been £556 million, not £545

million, and I apologise to the chamber for the error.

The Deputy Presiding Officer: Thank you.

Johann Lamont (Glasgow Pollok) (Lab): On a point of order, Presiding Officer.

The statement that the First Minister has just made is, frankly, astonishing and cannot be left to lie. The politics of this is that the contempt that Alex Salmond shows every day for the Scottish people and our Parliament is breathtaking. Every day, truth seems to give way to the soundbite, facts come second to the put-down and the interests of the Scottish people come second to the interests of Alex Salmond's career.

Can we be clear? When we had our debate this afternoon, Alex Salmond did not happen to mention a figure; he accused me of being wrong when I established that Mike Russell had misled the Parliament when he said that there were no cuts in the relevant period. Alex Salmond did not accidentally go from one column to another—

The Cabinet Secretary for Health and Wellbeing (Alex Neil): This is not a point of order, Presiding Officer.

Johann Lamont: He went from one column to another to establish his contention—

The Deputy Presiding Officer: Can you come to the point of order, please?

Johann Lamont: He wanted to contend that his Government had not cut college funding. We hear a lot about the First Minister's position on education, but the substance of what we were being told today was that there were no consequences for his position on education.

The Deputy Presiding Officer: Would you come to the point of order, please?

Johann Lamont: Our contention is that it is his position to attack further education.

We have a problem, because the back benchers—

The Deputy Presiding Officer: Ms Lamont, please would you come to the—

Johann Lamont: I am coming to my point.

The Deputy Presiding Officer: I would be grateful if you would.

Johann Lamont: We are coming to the point.

The Deputy Presiding Officer: Please do.

Johann Lamont: I ask the Presiding Officer to understand how serious this is. SNP back benchers do not allow the committees to scrutinise what is said. The First Minister said something in

direct contradiction to what his education minister said.

The reality is that the Presiding Officer must act. I ask him again to look at this, because after the debacle on Europe, how can we ever again believe a word that Alex Salmond says?

The Deputy Presiding Officer: I think that we have had enough, Ms Lamont.

Johann Lamont: The point of order is this: how will the Presiding Officer act to protect the democracy of this Parliament against the arrogance of the Government?

The Deputy Presiding Officer: Thank you. [*Interruption.*] Order.

As I have said before, members are aware that the veracity and content of the First Minister's statements and responses to questions are matters for the ministerial code. As such, it is for the First Minister to respond to any complaint that is made under the ministerial code; it is not a matter for me. The First Minister has made a statement.

Decision Time

17:01

The Deputy Presiding Officer (John Scott): There is one question to be put as a result of today's business.

The question is, that motion S4M-04791, in the name of Nicola Sturgeon, on the Freedom of Information (Amendment) (Scotland) Bill, be agreed to.

Motion agreed to,

That the Parliament agrees to the general principles of the Freedom of Information (Amendment) (Scotland) Bill.

Meeting closed at 17:02.

Correction

Fiona Hyslop has identified an error in her contribution and provided the following correction.

The Cabinet Secretary for Culture and External Affairs (Fiona Hyslop):

At col 13534, paragraph 2—

Original text—

Film forms part of the creative industries, which are one of the seven key growth sectors for Scotland's economy. The film industry has nearly 400 production and related companies in Scotland and they generate a turnover of £1.2 billion a year.

Corrected text—

Film forms part of the creative industries, which are one of the seven key growth sectors for Scotland's economy. The film industry has nearly 300 business units in Scotland and they contribute a Gross Value Added of £120 million a year.

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